TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 181.

SAMUEL STRINGFELLOW, GEORGE STRINGFELLOW, WILLIAM JENNINGS, AND BRIGHAM YOUNG, APPELLANTS,

vs.

JOSEPH M. CAIN, ELIZABETH CAIN, CHARLES CRISMON, AND ELIZABETH S. CRISMON,

AND

No. 182.

SAMUEL STRINGFELLOW, GEORGE STRINGFELLOW, WILLIAM JENNINGS, AND BRIGHAM YOUNG, PLAINTIFFS IN ERROR,

vs.

JOSEPH M. CAIN, ELIZABETH CAIN, CHARLES CRISMON, AND ELIZABETH S. CRISMON.

ERROR AND APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF UTAH.

FILED OCTOBER 4, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 181.

SAMUEL STRINGFELLOW, GEORGE STRINGFELLOW, WILLIAM JENNINGS, AND BRIGHAM YOUNG, APPELLANTS,

VS.

JOSEPH M. CAIN, ELIZABETH CAIN, CHARLES CRISMON, AND ELIZABETH S. CRISMON,

AND

No. 182.

SAMUEL STRINGFELLOW, GEORGE STRINGFELLOW, WILLIAM JENNINGS, AND BRIGHAM YOUNG, PLAINTIFFS IN ERROR,

VS.

JOSEPH M. CAIN, ELIZABETH CAIN, CHARLES CRISMON, AND ELIZABETH S. CRISMON.

ERROR AND APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF UTAH.

INDEX.

	Original.	Print.
Judgment probate court	2	1
Notice of appeals to district court	4	3
Appeal bonds	12	9
Statement on motion for new trial	23	16
Declaratory statement	24	16
CAIN'S WITNESSES.		
Allen, William W	59	46
Appleby, W. P	121	96
Bolwinkle, John M	87, 180	68, 142
Brown, T. D	32	25
Bullock, Thomas	69	55
Cain, Joseph M	143, 183	113, 144
Cain (or Richards), Elizabeth	162	128

	Original.	Print.
Cannon, Angus M	108	85
Crismon, Charles	135	106
Harker, Joseph	128	101
Hockings	47	37
Kelly, John	40	32
Livingston, Howard	115	91
Marshal, Thomas	119	94
Mulner, Samuel	30	24
Mumford, E. T	118	93
McKnight, James	106	84
Ogden, Sarah	85	67
Parker, William K	27	21
Richards, Silas	37	29
Richards, F. D	131	104
Richards, Samuel W	134	105
Roberts, Boliver	35	28
Shearer, Daniel	141	112
Shirtliff, Vincent	127	100
Taylor, Joseph J	50	39
Taylor, John	54	43
Taylor, William	57	45
Taylor, Sophia	64	50
Van Valkenberg	102	80
Whitney, John	52	41
Whitaker, Elizabeth	68	53
Whitaker, George	82	64
Young, Brigham	108	85

YOUNG AND RICHARDS' WITNESSES.

Bull, Emma	232	184
Bull, Joseph	294	232
Clayton, Augustus	245	194
Clinton, Jeter	289	228
Eddins, John	201	159
Eddins, Harriet	248	196
Fox, Jessee W	309	244
Hinman, Morgan L	183	144
Hinman, Henry L	188	148
Horn, Joseph	302	238
Haskinson, William	284	225
Jennings, William	291	230
Longstroth, Ann	227	180
Pixton, Robert	191	151
Pixton, Elizabeth	239	189
Richards, Nancy	222	175
Richards, Heber J	253	200
Shearer, Daniel	218	172
Snelgrove, Edward	215	170
Smith, George A	215	170
Young, LeGrand	289	229

STRINGFELLOW'S WITNESSES.

Cain (or Richards), Elizabeth	320	253
Richards, Samuel W	316	250
Stringfellow, George	321	254

JENNINGS'S WITNESS.

	Original.	Print.
Price, William	322	255

EXHIBITS.

Exhibit, Stringfellow, No. 1	327	258
No. 2	327	259
No. 3	329	260
No. 4	329	260
No. 5	330	261
Cain's exhibit B.—(See colored plat.)		
C	332	262
F	336	266
Jennings's exhibits	325, 326	256
Exhibit A, Z. C. M. I	326	257
Young's exhibit No. 4	326	258

ARGUMENT, ETC.

Argument of counsel	337	266
Decision and decree of judge	338	267
Notice of motion for new trial	341	270
Orders extending time to file statement	319	252
Errors assigned	343	271
Decision and findings	347	274
Judgment	352	277
Agreement of counsel	353	277
Notice of appeal	353	277
Undertaking on appeal	355	278
Decree	360	281
Appeals	362	282
Findings of fact in supreme court	364	283
Opinion	371	286
Bonds on appeal	391	294
Clerk's certificate	398	298
Writ of error	399	298
Citation and service	402	299
Bond	404	299
Stipulation of counsel as to use of record	407	300
Clerk's certificate	410	301
Assignment of errors	411	301

1 TERRITORY OF UTAH,
County of Salt Lake, ss:

In the supreme court in and for the Territory of Utah.

Be it remembered, that on the 9th day of January, A. D. 1875, came Elizabeth Cain, Joseph M. Cain, Elizabeth T. Crismon, and Charles Crismon, by Baskin & DeWolfe, their attorneys, and filed with the clerk of said court a transcript of the records and proceedings had in the district court of the third judicial district of said Territory of Utah, of which the following is a full, true, and correct copy, namely:

Transcript on appeal.—Filed January 9th, 1875. J. H. Beadle, clerk supreme court.

JOSEPH M. CAINE ET AL., APPELLANTS,
vs.
BRIGHAM YOUNG ET AL., RESPONDENTS.

2 In the 3d district court Utah Territory.

In the matter of the several applications of Samuel Stringfellow, George Stringfellow, William Jennings, Joseph M. Cain, Elizabeth Cain, Charles Crismon, and Elizabeth T. Cain, his wife, Brigham Young, Nicholas Groesbeck, and the heirs of Willard Richards, deceased, for deeds from the mayor of Salt Lake City for a part of lot 6, block 69, plat A, Salt Lake City survey.

Transcript of the records, proceedings, and papers in said matter.

TERRITORY OF UTAH,
County of Salt Lake, ss:

Probate court for said county.

In the matter of the several applications of Samuel Stringfellow and George Stringfellow, William Jennings, Brigham Young, senior, Elizabeth Cain, Joseph M. Cain, Charles Crismon and Elizabeth T. Crismon, his wife, the heirs of Willard Richards, deceased, and Nicholas Groesbeck, claiming to be the legal owners of possession, and entitled to deeds in fee-simple to the portions filed on by them respectively, of the east half of lot six (6), block sixty-nine (69), plat A, Salt Lake City survey.

This cause came on for final hearing on the 25th day of November, A. D. 1872, when it was argued by the attorneys for the parties herein and submitted to the court, whereupon it was held under advisement until the 12th day of April, 1873, when the following decision was delivered:

Upon investigation of the evidence adduced and the allegations of the attorneys for the respective applicants herein, the court is of the opinion, and it is therefore [26] so ordered and adjudged, that Samuel Stringfellow and George Stringfellow are the rightful owners of all that portion of said half lot described and bounded as follows, to wit: Commencing (16) sixteen inches north from the southeast corner of said lot; thence west eight (8) rods; thence south sixteen and one-fourth (16¼) feet to the place of beginning.

[199] That William Jennings is the rightful owner of all that portion of said lot described and bounded as follows, to wit: Commencing eighty-two and one-half (82½) feet north from the southeast corner of said lot; thence west eight (8) rods; thence south twenty-five (25) feet; thence east eight (8) rods; thence north twenty-five (25) feet to the place of beginning.

[200.] That William Jennings is the rightful owner of so much of the land claimed in statement No. 200, described and bounded as follows, to wit, commencing one hundred and thirty-five (135) feet west from the northeast corner of said lot; thence west fifty-six (56) feet; thence south ten (10) rods; thence east (40) feet; thence north eighty-two and a half (82½) feet; thence east sixteen (16) feet; thence north eighty-two and a half (82½) feet to the place of beginning.

[210.] That William Jennings is the rightful owner of the following-described portion of said lot: Commencing at the northeast corner of said lot; thence west one hundred and thirty-five (135) feet; thence south forty and one-third (40⅓) feet; thence east one hundred and thirty-five (135) feet; thence north forty and one-third (40⅓) feet to the place of beginning.

[1839.] Brigham Young, senior, is the rightful owner of as much of the land claimed and described in statement No. 1839, described and bounded as follows, to wit: Commencing sixty-eight and one-third (68⅓) feet north from the northeast corner of said lot; thence south fourteen and one-sixth (14⅙) feet; thence west one hundred and thirty-five (135) feet; thence north fourteen and one-sixth (14⅙) feet; thence east one hundred and thirty-five (135) feet to place of beginning.

[1950.] That Brigham Young, senior, is the rightful owner of so much of the land described and claimed by him in statement in No. 1950, described and bounded as follows, to wit: commencing forty and one-third (40⅓) feet south from the northeast corner of said ; thence west one hundred and thirty-five (135) feet; thence north twenty-eight (28) feet to the place of beginning.

[2641.] That Elizabeth Cain, Joseph M. Cain, Elizabeth T. Crismon, and Charles Crismon, heirs of the estate of Joseph Cain, deceased, are the rightful owners of all that portion of said lot described and bounded as follows, to wit: Conmmencing seventeen and seven-twelfths (17 7/12) feet north from the southeast corner of said lot; thence west eight (8) rods; thence south sixteen and one-fourth (16¼) feet; thence west one (1) rod; thence south one and one-third (1⅓) feet; thence west two (2) feet and six (6) inches; thence north five (5) rods; thence east nineteen (19) feet; thence south twenty-five (25) feet; thence east eight (8) rods; thence south thirty-nine and eleven-twelfths (39 11/12) feet to the place of beginning.

[3120.] That the claim of Brigham Young, senior, viz, statement No. 3120, having been withdrawn by applicant, is hereby dismissed from this action.

[3273.] That the heirs of the estate of Willard Richards, deceased, are not the owners of the land claimed by them, nor of any portion thereof.

[3541.] That Nicholas Groesbeck is the rightful owner of all that portion of said lot, described and bounded as follows, to wit: Commencing at the southeast corner of said lot; thence west nine (9) rods; thence north sixteen (16) inches; thence east nine (9) rods; thence south sixteen inches to the place of beginning; and it is ordered that certificate of the issue to the respective applicants in accordance herewith.

It is further ordered and adjudged that the costs in this behalf expended, taxed at six hundred and seventy-one dollars and seventy cents ($671\frac{76}{100}$) be apportioned among the respective applicants as follows, to wit: tne heirs of the estate of Willard Richards, deceased, pay the amount of two hundred twenty-three $\frac{55}{100}$ dollars; the heirs of the estate of Joseph Cain, deceased, pay the amount of three hundred & forty-seven $\frac{65}{100}$ dollars; Samuel and George Stringfellow pay the amount of thirteen $\frac{35}{100}$ dollars; William Jennings pay the amount of twenty-eight $\frac{60}{100}$ dollars; Brigham Young, senior, pay the amount of fifty-four $\frac{65}{100}$; Nicholas Groesbeck pay the amount of four $\frac{60}{100}$; and it is further ordered that execution issue therefor in accordance herewith.

E. SMITH,
Judge of said Court.

In the matter of Stringfellow Brothers, William Jennings, et al., applicants for the title to east half of lot 6, block 69, plat A, Salt Lake City.

R. N. Baskin, on this 12th day of April, 1873, gives notice on behalf of the heirs of Joseph Cain, Elizabeth Cain, and Charles Crismon of their intention to appeal from the decision rendered this day in the above matter.

R. N. BASKIN,
Att'y for Joseph M. Cain, Elizabeth Cain, Elizabeth Crismon, & Charles Crismon.

(Endorsed on the back as follows, to wit): In the matter of Stringfellow Brothers, W'm Jennings, et al. Application for the title of lot 6, block 69, plat A. Notice of appeal. Filed April 12, 1873. D. Bockholt, clerk.

In the probate court of Salt Lake County, Utah Territory.

In the matter of the several applications of Samuel Stringfellow, George Stringfellow, William Jennings, Brigham Young, s'r, Elizabeth Cain, Joseph M. Cain, Charles Crismon, and Elizabeth T. Crismon, his wife, the heirs of Willard Richards, deceased, Nicholas Groesbeck, claiming to be the legal owner of possession and entitled to conveyance of the respective portions filed on by them respectively of the east half of lot six (6), sixty-nine, plat A, in Salt Lake City survey.

Please take notice that the above-named Elizabeth Cain, Joseph M. Cain, and Charles Crismon, and Elizabeth T. Crismon, his wife, hereby appeal to the third district court of Utah Territory from the final decision, judgment, decree, and order made and entered in the above matter on the 12th day of April, A. D. 1873, in said probate court, as far as the same are adverse to the claim of the last-named parties, or either of them.

In witness whereof we hereunto set our hands this the fifteenth day of April, in the year of our Lord one thousand eight hundred and seventy-three.

To the probate judge of Salt Lake County and the clerk of his said court.

GEORGE E. WHITNEY,
Attorney of Samuel and George Stringfellow.
WILLIAMS & YOUNG,
Attorney of the Heirs of Willard Richards, deceased, and Brigham Young, senior, Nicholas Groesbeck, William Jennings, Elizabeth Cain, Joseph M. Cain, Charles Crismon, jr, E. T. Crismon, his wife.

We the undersigned hereby acknowledge service on us of a copy of the foregoing notice of appeal, together with the indorsements of
6 the filing, &c., on the back of the same, this the 15th day of April, 1873.

WILLIAMS & YOUNG,
Attorneys for Brigham Young and the Heirs of Willard Richards, dec's'd.

TERRITORY OF UTAH,
Salt Lake County:

Joseph M. Cain being first duly sworn, upon his oath says, that on the 15th day of April, A. D. 1873, he served the aforesaid notice of appeal, together with the indorsements of the filing, &c., on the back of the same by the above-named William Jennings and Nicholas Groesbeck, by leaving with them personally a copy of said notice and indorsements.

J. M. CAIN.

Sworn to and subscribed before me this the 15th day of April, A. D. 1873, as witness my hand and seal of 3d district court of third judicial district, Utah Territory, on said day.

[L. S.] JOS. F. NOUNNAN, *Clerk.*

TERRITORY OF UTAH,
Salt Lake County:

R. N. Baskin being duly sworn, upon his oath says, that he served the foregoing notice of appeal on George E. Whitney, attorney of Samuel Stringfellow and George Stringfellow, named in said notice, on the 15th day of April, A. D. 1873, by leaving a copy of said notice, with the indorsements thereon, at the office of said George E. Whitney, in his absence, with Harmel Pratt, a person having charge of said office; said copy was so left at said office at the hour of three o'clock p. m. of said day.

R. N. BASKIN.

Sworn to and subscribed before me this the 15th day of April, A. D. 1873, as witness my hand and seal of 3d district court of 3d judicial district, Utah Territory, on said day.

[L. S.] JOS. F. NOUNNAN, *Clerk.*

(Indorsed on the back as follows, to wit:) Joseph M. Cain et al. vs. Brigham Young et al. Notice of appeal. Filed April 15th, 1873. D. Bockholt, clerk.

In the probate court.

TERRITORY OF UTAH,
Salt Lake County:

Hon Elias Smith, judge.

In the matter of the several applications of Nicholas Groesbeck, Samuel Stringfellow, George Stringfellow, William Jennings, Brigham
7 Young, Elizabeth Cain, Joseph M. Cain, Charles Crismon, Elizabeth T. Crismon, his wife, and the heirs of William Richards, deceased, claiming to be the legal owners of and entitled to conveyance in fee of the portions filed on by them respectively of the east half of lot six (6), block sixty-nine (69), plat A, in Salt Lake City survey in said county and Territory.

Please take notice that the above-named Brigham Young hereby appeals to the third judicial district court of Utah Territory from so much

of the final decision, judgement, and order made or entered in the above matter on the 12th day of April, A. D. 1873, in the said probate court, as awards to the said Elizabeth Cain, Joseph M. Cain, Charles Crismon, and Elizabeth T. Crismon, his wife, or either of them, that portion of said east half of lot six (6), block sixty-nine (69), plat A, bounded and described as follows, to wit: Beginning at a point one hundred and seven and one-half (107½) feet south and one hundred and thirty-two (132) feet west from the northeast corner of said lot six (6), and running thence north twenty-five (25) feet; thence west three (3) feet; thence south twenty-five (25) feet; thence east (3) three feet to the place of beginning.

Witness my hand this the tenth day of May, A. D. 1873.

BRIGHAM YOUNG,
By WILLIAMS & YOUNG,
His Attorneys.

To the judge & clerk of the probate court of Salt Lake County, Utah Territory, Elizabeth Cain, Joseph M. Cain, Charles Crismon, and Elizabeth T. Crismon, his wife.

In the probate court.

UTAH TERRITORY, *Salt Lake City:*

Hon. Elias Smith, judge.

In the matter of the several applicant's of Nicholas Groesbeck, Samuel Stringfellow, George Stringfellow, William Jennings, Brigham Young, Elizabeth Cain, Charles Crismon, Elizabeth Crismon, his wife, and the heirs of Willard Richards, deceased, claiming to be the legal owners of and entitled to conveyances in fee of the portions filed on by them respectively of the east half of lot six (6), block sixty-nine (69), plat A, in Salt Lake City survey, in said county and Territory.

8 Please take notice that Heber J. Richards, Joseph S. Richards, the agents of the heirs of the said Willard Richards, deceased, for and in behalf of the said heirs, hereby appeal to the district in and for the third judicial district of Utah from as much of the final decision, judgement, and order made and entered in the above matter on the 12th day of April, A. D. 1873, in the said probate court, as awards to the said Samuel Stringfellow, George Stringfellow, Nicholas Groesbeck, Elizabeth Cain, James M. Cain, Charles Crismon, and Elizabeth Crismon, his wife, or either of them, that portion of the said east half of lot (6) six, block sixty-nine (69), plat A, bounded and described as follows, to wit: Beginning at the southeast corner of said lot six (6), and running thence north seventeen (17) feet and seven (7) inches; thence east one hundred and fifty-one (151) feet to the place of beginning.

Witness our hands this tenth day of May, A. D. 1873.

HEBER J. RICHARDS,
JOS. S. RICHARDS,
For the Heirs of Willard Richards, deceased,
Per WILLIAMS & YOUNG,
Their Att'ys.

To the judge & clerk of the probate court of Salt Lake County, Utah Territory, Elizabeth Cain, Joseph M. Cain, Charles Crismon, and Elizabeth T. Crismon, his wife, Samuel Stringfellow, George Stringfellow, and Nicholas Groesbeck.

In the probate court.

COUNTY OF SALT LAKE,
Territory of Utah:

Hon. Elias Smith, Judge.

In the matter of the several applications of Nicholas Groesbeck, Samuel Stringfellow, George Stringfellow, William Jennings, Brigham Young, Elizabeth Cain, Joseph M. Cain, Charles Crismon, and Elizabeth T. Crismon, his wife, and the heirs of Willard Richards, deceased, claiming to be the legal owners of and entitled to conveyances in fee-simple of the portion filed on by them respectively of the east half of lot six (6), block sixty-nine (69), plat A, in Salt Lake City survey, in said county and Territory.

Please take notice that the above-named William Jennings hereby appeals to the third judicial district court of Utah Territory
9 from the final decision, judgement, decree, and order made and entered in the above matter on the 12th day of April, A. D. 1873, in the said probate court, as far as the same are adverse to the claim of this appellant.

Witness my hand this tenth day of May, A. D. 1873.

WILLIAM JENNINGS,
By WILLIAMS & YOUNG,
His Attorneys.

To the judge and clerk of the probate court of Salt Lake County, Utah Territory, Elizabeth Cain, Joseph M. Cain, Charles Crismon, and Elizabeth T. Crismon, his wife, and Brigham Young.

In the probate court.

UTAH TERRITORY,
Salt Lake County:

Hon. Elias Smith, judge.

In the matter of several applicants of Nicholas Groesbeck, Samuel Stringfellow, George Stringfellow, William Jennings, Brigham Young, Elizabeth Cain, Joseph M. Cain, Charles W. Crismon and Elizabeth T. Crismon, his wife, and the heirs of Willard Richards, deceased, claiming to be the legal owners of and entitled to conveyances in fee of the portions filed on by them respectively, of the east half of lot six (6), block sixty-nine (69), plat A, in Salt Lake City survey, in said county and Territory.

Please take notice that Heber J. Richards and Joseph S. Richards, the agents of the heirs of the said Willard Richards, deceased, for and in behalf of the said heirs, hereby appeal to the district court in and for the third judicial district, Territory of Utah, from as much of the final judgement and order, made and entered in the above matter on the 12th day of April, A. D. 1873, in the said probate court, as awards to the said Samuel Stringfellow, George Stringfellow, Nicholas Groesbeck, Elizabeth Cain, Joseph M. Cain, Charles Crismon and Elizabeth T. Crismon, his wife, or either of them, that portion of the said east half of lot six (6), block sixty-nine (69), plat A, bounded and described as follows, to wit: Beginning at the southeast corner of said lot six (6) and running thence north seventeen (17) feet and seven (7) inches,

10 thence west one hundred and fifty-one (151) feet to the place of beginning.

Witness our hands this tenth day of May, A. D. 1873.

HEBER J. RICHARDS,
JOS. S. RICHARDS,
For the Heirs of Willard Richards, Deceased,
Per WILLIAMS & YOUNG,
Their Attorneys.

To the judge & clerk of the probate court of Salt Lake County, Utah Territory, Elizabeth Cain, Joseph M. Cain, Charles Crismon, Elizabeth T. Crismon, his wife, Samuel Stringfellow, George Stringfellow, and Nicholas Groesbeck.

TERRITORY OF UTAH,
Salt Lake County, ss:

I, P. L. Williams, being duly sworn, on my oath say that I served a true and correct copy of the foregoing notice of appeal on Nicholas Groesbeck, by delivering the same to him personally at Salt Lake City, in said county and Territory, on the 14th day of May, A. D. 1873.

P. L. WILLIAMS.

Sworn and subscribed to before me this 20th day of May, 1873.

JETER CLINTON, *J. P.*

We hereby acknowledge service of a copy of the within notice on me this tenth day of May, A. D. 1873.

BASKIN & DE WOLFE,
Attorneys for Joseph M. Cain, Elizabeth Cain, Charles Crismon, and Elizabeth T. Crismon, his wife.
GEORGE E. WHITNEY,
Attorney for Stringfellow Brothers.

(Endorsed:) Probate court. Joseph M. Cain et al. vs. Brigham Young et al. Notice of appeal. Richards' heirs, appellants.

In the probate court.

COUNTY OF SALT LAKE,
Territory of Utah:

Hon. Elias Smith, judge.

In the matter of the several applications of Nicholas Groesbeck, Samuel Stringfellow, George Stringfellow, William Jennings, Brigham Young, Elizabeth Cain, Joseph M. Cain, Charles Crismon, Elizabeth Crismon, his wife, and the heirs of Willard Richards, deceased, to be the legal owners of and entitled to conveyances in fee of the portions filed on by them respectively of the east half of lot six (6), block sixty-nine (69), plat A, in Salt Lake City survey in said county & Territory.

Please take notice that the above-named William Jennings hereby appeals to the third district court of Utah Territory from
11 the final decision, judgement, decree, and order made and entered in the above matter on the 12th day of April, A. D. 1873, in the said probate court, as far as the same are adverse to this appellant.

Witness my hand this the tenth day of May, A. D. 1873.

WILLIAM JENNINGS,
By WILLIAMS & YOUNG,
His Attorneys.

To the judge and clerk of the probate court of Salt Lake County, Utah Territory, Elizabeth Cain, Joseph M. Cain, Charles Crismon, and Elizabeth T. Crismon, his wife, and Brigham Young.

A copy of the within notice served on me this 10th day of May, A. D. 1873.

BASKIN & DEWOLF,
Atty's for Joseph M. Cain, Elizabeth Cain, Charles Crismon, and Elizabeth T. Crismon.

(Endorsed:) Probate court. Joseph M. Cain et al. vs. Brigham Young et al. Notice of appeal. William Jennings, appellant.

In the probate court.

TERRITORY OF UTAH,
Salt Lake County:

Hon. Elias Smith, judge:

In the matter of the several applications of Nicholas Groesback, Samuel Stringfellow, George Stringfellow, William Jennings, Brigham Young, Elizabeth Cain, Joseph M. Cain, Charles Crismon, Elizabeth T. Crismon, his wife, and the heirs of Willard Richards, deceased, claiming to be the legal owner of and entitled to conveyances in fee of the portions filed on by them respectively of the east half of lot six (6), block sixty-nine (69), plat A, in Salt Lake City survey, in said county and Territory.

Please take notice that the above-named Brigham Young hereby appeals to the third judicial district court of Utah Territory from so much of the final decision, judgement and order made and entered in the above matter on the 12th day of April, A. D. 1873, in the said probate court, as awards to the said Elizabeth Cain, Joseph M. Cain, Charles Crismon, and Elizabeth T. Crismon, his wife, or either of them, that portion of said east half of lot six (6) block sixty-nine (69), plat
12 A, bounded and described as follows, to wit: Beginning at a point one hundred and seven and a half (107½) feet south and one hundred and thirty-two (132) feet west from the northeast corner of said lot six (6), and running thence north twenty-five (25) feet, thence west three (3) feet, thence south twenty-five (25) feet, thence east three (3) feet to the place of beginning.

Witness my hand this the tenth day of May, A. D. 1873.

BRIGHAM YOUNG,
By WILLIAMS & YOUNG,
His attorneys.

To the judge and clerk of the probate court of Salt Lake County, Utah Territory, Elizabeth Cain, Joseph M. Cain, Charles Crismon, and Elizabeth T. Crismon, his wife.

I hereby acknowledge service of a copy of the within notice on me this 10th day of May, A. D. 1873.

BASKIN & DEWOLFE,
Attorneys Joseph M. Cain, Elizabeth Cain, Charles Crismon, and Elizabeth T. Crismon.

(Endorsed:) Probate court. Joseph M. Cain et al vs. Brigham Young. Notice of appeal. Brigham Young, appellant.

Appeal bonds.

In the probate court of Salt Lake County, Utah Territory.

In the matter of the several applications of Samuel Stringfellow and George Stringfellow, William Jennings, Brigham Young, S'r, Elizabeth Cain, Joseph M. Cain, Charles Crismon, and Elizabeth T., his wife, the heirs of Willard Richards, deceased, Nicholas Groesback, claiming to be the legal owners of possession and entitled to conveyance of the portion filed on their respectively of the east half of lot six (6), block sixty-nine (69), plot A, in Salt Lake City survey.

Whereas the aforesaid Elizabeth Cain, Joseph M. Cain, Charles Crismon, and Elizabeth T. Crismon, his wife, are about in the above-entitled matter to appeal to the third district court of Utah Territory from the final decision, judgement, order, and decree, made and entered in said matter on the 12th day of April, A. D. 1873, in said pro-
13 bate court, as far as the same are adverse to the last named parties, or either of them.

Now, therefore, in consideration of the premises and of such appeal, we, the undersigned, Hyram E. Shirtliff, of the county of Davis, by occupation a farmer, and Hiram Kimball, of the city and county of Salt Lake, by occupation a clerk, do hereby jointly and severally undertake and promise on the part of the appellants and each of them that the said appellants will pay all damages and costs which may be awarded against them or either of them on the appeal, to which amount, whatever it may prove to be, we acknowledge ourselves jointly and severally bound by these presents.

In testimony whereof we hereto set our hands and seals this the 16th day of April, in the year of our Lord one thousand eight hundred and seventy-three.

HYRUM C. SHIRTLIFF. [L. S.]
HIRAM KIMBALL. [L. S.]

Signed in presence of—
R. N. BASKIN.
C. A. GOULD.

TERRITORY OF UTAH,
Salt Lake County, ss:

I, Hyrum C. Shirtliff, whose name is signed to the foregoing undertaking, being first duly sworn, upon oath say that I am a freeholder in the county of Davis, and am worth thirty thousand dollars over and above all my just debts and liabilities, exclusive of property exempt from execution.

HYRAM C. SHIRTLIFF.

Sworn and subscribed before me this 16th day of April, A. D. 1873.
[SEAL.] C. A. GOULD,
Notary Public.

TERRITORY OF UTAH,
Salt Lake County, ss:

I, Hiram Kimball, whose name is signed to the foregoing undertaking, being first duly sworn, upon oath say that I am a freeholder in said county of Salt Lake, and am worth one thousand dollars over and above all my just debts and liabilities, exclusive of property exempt from execution.

HIRAM KIMBALL.

Sworn to and subscribed before me this 16th day of April, A. D. 1873.
L. S.] C. A. GOULD,
Notary Public.

14 (Endorsed:) Joseph M. Cain et al. vs. Brigham Young et al. Undertaking on appeal. Filed April 16th, 1873. D. Bockholt, clerk.

In the probate court of Salt Lake County, Utah Territory.

In the matter of the several applications of Samuel Stringfellow and George Stringfellow, William Jennings, Brigham Young, sr., Elizabeth Cain, Joseph M. Cain, Charles Crismon and Elizabeth T. Crismon, his wife, the heirs of Willard Richards, deceased, and Nicholas Groesbeck, claiming to be the legal owners of possession and entitled to conveyances of the portions filed on by them, respectively, of the east half of lot six (6), block sixty-nine (69), plat A, Salt Lake City survey.

Whereas the above named Elizabeth Cain, Joseph M. Cain, Charles Crismon and Elizabeth T. Crismon his wife, have demanded and claimed an appeal from the final judgement, decree, and order of the said probate court made in said matter on the 12th day of April, A. D. 1873, and are now perfecting said appeal, we, the last-named parties as principals, and L. Granger, of Salt Lake, by occupation a trader, Robert N. Baskin, attorney, Henry W. Lawrence, merchant, of Salt Lake County, and Vincent Shirtliff, of Salt Lake County, by occupation a farmer, as sureties, do by these presents, jointly and severally, bind ourselves unto the other persons named above as parties in the matter aforesaid, in the penal sum of ten thousand dollars, to the payment of which, well and truly to be made to the parties last aforesaid, we jointly and severally bind ourselves, our heirs, executors and administrators firmly by these presents.

Provided, always, and these presents are upon this condition, that if said appellants shall prosecute said appeal with effect, and if the appeal be dismissed or judgement below affirmed, they shall comply with
15 the judgement and orders of the court below, and pay all costs and sums of money that may be adjudged against them or either of them, in the court appealed to, and shall comply with the order of that court; and that if the judgement, order or decree appealed from or any part thereof, be affirmed, appellants shall pay the amount directed to be paid by the judgement, order, or decree, or the part of such amount as to which the judgement, order, or decree shall be affirmed, if affirmed only in part, and all damages and costs which shall be awarded against the appellants upon said appeal, then these presents to be void, otherwise to be and remain in full force.

In testimony whereof we hereunto set our hands and seals this 17th day of April, in the year of our Lord one thousand eight hundred and seventy-three.

ELIZABETH CAIN.	[L. S.]
JOS. M. CAIN.	[L. S.]
CHARLES CRISMON, JR.	[L. S.]
ELIZABETH T. CRISMON.	[L. S.]
L. GRANGER.	[L. S.]
ROBERT N. BASKIN.	[L. S.]
HENRY W. LAWRENCE.	[L. S.]
VINCENT SHIRTLIFF.	[L. S.]

Witness:
C. A. GOULD.
JAS. J. MCNAMEE.

Approved by me this day of April, A. D. 1873.

TERRITORY OF UTAH,
Salt Lake County, ss:

The above-named R. N. Baskin, Henry W. Lawrence, Vincent Shirtliff, being duly sworn, upon their oath say that they are each freeholders and reside in the county of Salt Lake, in said Territory, and is worth the sum of over twenty-thousand dollars each over and above all their just debts and liabilities exclusive of property exempt from execution.

ROBERT N. BASKIN.
HENRY W. LAWRENCE.
VINCENT SHIRTLIFF.

Sworn to and subscribed before me this the 18th day of April, A. D. 1873.

[L. S.] C. A. GOULD,
Notary Public.

TERRITORY OF UTAH,
Salt Lake County, ss:

The above-named L. Granger, being duly sworn, upon his oath says that he is a freeholder, and resides in the county of Salt Lake, in
16 said Territory, and is worth the sum of ten thousand dollars over and above all of his just debts and liabilities exclusive of the property exempt from execution.

L. GRANGER.

Sworn to and subscribed before me this the 19th day of April, A. D. 1873.

[L. S.] C. A. GOULD,
Notary Public.

(Endorsed:) Joseph M. Cain et al., Brigham Young et al. Appeal bond. Filed and approved April 19th, 1873. D. Brockholt, clerk.

In probate court.

SALT LAKE COUNTY,
Utah Territory:

Hon. Elias Smith, judge.

In the matter of the several applications of Nicholas Groesbeck, Samuel Stringfellow, George Stringfellow, William Jennings, Brigham Young, Elizabeth Cain, Joseph M. Cain, Charles Crismon, and Elizabeth T. Crismon, his wife, and the heirs of Willard Richards, deceased, claiming to be the legal owners of and entitled to conveyance in fee of the portion filed on by them respectively of the east half of lot six (6), block sixty-nine (69), plat A, in Salt Lake City, survey in said county and Territory.

Whereas Heber John Richards and Joseph S. Richards, the agents of the heirs of Willard Richards, deceased, for and on behalf of the said heirs, have appealed to the district court within and for the third judicial district of the Territory of Utah from so much of the decision, judgement, and order made and entered in the above matter on the 12th day of April, A. D. 1873, in the said probate court, as awarded to the said Samuel Stringfellow, George Stringfellow, Nicholas Groesbeck, Elizabeth Cain, Joseph M. Cain, Charles Crismon, Elizabeth T. Crismon, his wife, or either of them, that portion of the said east half of lot six (6), block sixty-nine (69), plat A, bounded and described as follows, to wit: Beginning at the southeast corner of said lot six (6), and running thence north seventeen (17) feet and seven (7) inches; thence west one hundred and fifty-one (151) feet; thence south seventeen (17) feet and

seven (7) inches; thence east one hundred and fifty-one (151) feet to the place of beginning.

17 Now, therefore, in consideration of the premises and of such appeal we, the undersigned, Heber J. Richards and Joseph S. Richards, as principals, and John Sharp, of Salt Lake City, Utah Territory, a railroad freight-agent, and A. Livingston, of said city and Territory, a lumberman, as sureties, do jointly and severally undertake and promise on the part of said Heber J. Richards and Joseph S. Richards, and the other heirs of said William Richards, deceased, that the said applicants will pay all damages and costs that may be awarded against them on the appeal; and whereas the said appellants are desirous of staying the execution of so much of the said judgement as they have appealed from, so far as it relates to or directs the issuing of a certificate of the title to the land above described. We do further, in consideration thereof and of the premises, jointly and severally undertake and promise, and do acknowledge ourselves further jointly and severally bound in the sum of five thousand (5,000) dollars that the said appellants will abide by and obey the judgement, order, and decree of the appellate court upon the appeal.

Witness our hands and seals the 12th day of May, A. D. 1873.

H. J. RICHARDS.
JOS. S. RICHARDS.
JAMES SHARP,
Freight & Ticket Ag't U. C. R. R., Salt Lake City.
A. LIVINGSTON,
Lumberman, Salt Lake City.

TERRITORY OF UTAH,
Salt Lake County, ss:

We, James Sharp and A. Livingston, the sureties in the foregoing undertaking, being duly sworn, do each of us, on our respective oaths, say that we are each worth the sum of five thousand (5,000) dollars over and above all our just debts and liabilities exclusive of the property exempt from execution.

JAMES SHARP.
A. LIVINGSTON.

Subscribed and sworn to before me this 14th day of May, A. D. 1873.
[L. S.] JOHN T. CAIN,
Notary Public.

18 (Endorsed:) Probate court. Joseph M. Cain et al. *vs.* Brigham Young et al. Undertaking on appeal. Filed and approved May 14th, 1873. E. Smith, probate judge Richards. Heirs, appellants.

In the probate court.

SALT LAKE COUNTY,
Utah Territory:

Hon. Elias Smith, judge.

In the matter of the applications of Nicholas Groesbeck, Samuel Stringfellow, George Stringfellow, William Jennings, Brigham Young, Elizabeth Cain, Joseph M. Cain, Charles Crismon, and Elizabeth T. Crismon, his wife, and the heirs of Williard Richards, deceased, claiming to be the legal owner of and entitled to conveyances in fee of the portion filed on by them respectively of the east half of lot six (6), block sixty-nine (69), plat A, in Salt Lake City survey, in said county and Territory.

Know all men by these presents that we, William Jennings, prin-

cipal, and H. S. Eldredge and H. B. Clawson, as sureties, are held and jointly bound in the penal sum of ten thousand (10,000) dollars, to the payment of which, well and truly to be made, we do hereby jointly and severally bind ourselves, our heirs, executors, and administrators, sealed with our seals and dated this tenth day of May, A. D. 1873.

The condition of the above obligation is such, that whereas the above, bounden William Jennings has claimed and does hereby take an appeal from so much of the judgement decision, and order made and entered by the probate court for Salt Lake County, Utah Territory, on the 12th day of April, A. D. 1873, in the above-entitled matter, as is adverse to the claim of the said William Jennings, to the district court in and for the third judicial district of Utah: Now, therefore, if the said appellant, William Jennings, shall and will prosecute the said appeal with effect, and that if such appeal be dismissed or the judgement below affirmed he will comply with the judgement and order made by the court
19 below, and that he will pay all costs and sums of money that may be adjudged against him in the court appealed to, and will comply with the judgement and order of that court (subject to all rights to appeal therefrom), then this obligation to be null and void otherwise it shall be and remain in full force and effect.

WILLIAM JENNINGS. [L. S.]
H. S. ELDREDGE. [L. S.]
H. B. CLAWSON,
Salt Lake City, Merchant.

(Endorsed:) Probate court Joseph M. Cain et al. vs. Brigham Young et al. Appeal bond. Filed and approved this 10th day of May A. D., 1873. D. Brockholt, clerk.

In the probate court.

SALT LAKE COUNTY,
Utah Territory:

Hon. Elias Smith, judge.

In the matter of the application of Nicholas Groesbeck, Samuel Stringfellow, George Stringfellow, William Jennings, Brigham Young, Elizabeth Cain, Joseph M. Cain, Charles Crismon, and Elizabeth T. Crismon, his wife, and the heirs of Willard Richards, deceased, claiming to be the legal owners of and entitled to conveyances in fee of the portion filed on by them respectively of the east half of lot six (6), block sixty-nine (69), plat A, in Salt Lake City survey, in said county and Territory.

Whereas William Jennings, one of the above-named applica*tion*'s in the said matter, has appealed to the district court within and for the third judicial district of the Territory of Utah, from so much of the decision, judgement, decree, and order made and entered in the said matter by the probate court for said Salt Lake County, Utah Territory, on the 12th day of April, A. D. 1873, as is adverse to the claim of said William Jennings:

Now, therefore, in consideration of the premises and of such appeal, we, the undersigned, William Jennings, as principal, and H. S. Eldredge, of Salt Lake City, Utah Territory, a banker by occupation, and H. B. Clawson, of said city and Territory, a merchant, as sureties, do hereby jointly and severally undertake and promise on

20 the part of the said William Jennings, the appellant, that the said appellant will pay all damages and costs that may be awarded againt him on the appeal.

And whereas the appellant, William Jennings, is desirous of staying the execution of so much of that said judgement as he has appealed from, so far as it relates to or directs the issue of a certificate to the mayor of Salt Lake City of the land filed on by this appellant in the east half of said lot six (6), block sixty-nine (69), plat A, and not adjudged in favor of nor awarded to this appellant, we do further, in consideration thereof and of the premises, jointly and severally undertake and promise, and do acknowledge ourselves further jointly and severally bound in the sum of ten thousand (10,000) dollars, that the said appellant will abide by and obey the judgement, order, and decree of the appellate court upon the appeal.

Witness our hands and seals this tenth day of May, A. D. 1873.

WILLIAM JENNINGS. [L. S.]
H. S. ELDREDGE, [L. S.]
Salt Lake City, Bank Pres't.
H. B. CLAWSON,
Salt Lake City, Merchant.

TERRITORY OF UTAH,
Salt Lake County, ss:

We, H. S. Eldredge, of Salt Lake City, and H. B. Clawson, the sureties in the foregoing undertaking, being duly sworn, do each of us on our respective oaths say, that we are each worth the sum of ten thousand (10,000) dollars over and above our just debts and liabilities, exclusive of the property exempt from execution.

H. S. ELDREDGE.
H. B. CLAWSON.

Subscribed and sworn to this tenth day of May, A. D. 1873.
[L. S.] JOHN T. CAIN,
Notary Public.

(Endorsed:) Probate court. Joseph Cain et al. vs. Brigham Young et al. Undertaking in appeal. Filed and approved May 14, 1873. E. Smith, probate judge. William Jennings, appellant.

21 In the probate court.

UTAH TERRITORY,
Salt Lake County:

Hon. Elias Smith, judge.

In the matter of the several applications of Nicholas Groesbeck, Samuel Stringfellow, George Stringfellow, William Jennings, Brigham Young, Elizabeth Cain, Joseph M. Cain, Charles Crismon, and Elizabeth T. Crismon, his wife, and the heirs of Willard Richards, deceased, claiming to be the legal owners of, and entitled to conveyance in fee of the portions filed on by them respectively of the east half of lot six (6), block sixty-nine (69), plat A, in Salt Lake City survey, in said county and Territory.

Whereas, Brigham Young, one of the above-named applicants in said matter, has appealed to the district court within and for the third judicial district of Utah Territory from so much of the decision, judgment, and order made and entered in said matter by the probate court of said Salt Lake County, Utah Territory, on the 12th day of April, A. D. 1873,

as awards to the said Elizabeth Cain, Joseph M. Cain, Charles Crismon, and Elizabeth T. Crismon, his wife, or either of them, that portion of said east half of said lot six (6), block sixty-nine (69), plat A, bounded and described as follows, to wit: Beginning at a point one hundred and seven and one-half (107½) feet south and one hundred and thirty-two (132) feet west from the northeast corner of said lot six (6), and running thence north twenty-five (25) feet; thence west three (3) feet; thence south twenty-five (25) feet; thence east three (3) feet to the place of beginning:

Now, therefore, in consideration of the premises and of such appeal, we, the undersigned, Brigham as principal, and L. S. Hill, of Salt Lake City, Utah Territory, a bank cashier, and James T. Little, of Salt Lake City, Utah Territory, a dealer in real estate, as sureties, do hereby jointly and severally undertake and promise, on the part of the
22 said Brigham Young, the appellant, that the said appellant will pay all damages and costs that may be awarded against him on the appeal.

And whereas the appellant, Brigham Young, is desirous of staying the execution of so much of the said judgment as he has appealed from, so far as it relates to or directs the issuing of a certificate to the mayor of Salt Lake City of the land hereinbefore described, we do further, in consideration thereof and of the premises, jointly and severally undertake and promise, and do acknowledge ourselves further jointly and severally bound in the sum of five thousand dollars (5,000) that the appellant will abide by and obey the judgement, order, and decree of the appellate court upon the appeal.

BRIGHAM YOUNG, [L. S.]
By WILLIAMS & YOUNG,
His Attorneys.
L. S. HILLS, [L. S].
Salt Lake City, Bank Cashier.
J. T. LITTLE, [L. S.]
Salt Lake City, Dealer Real Estate.

TERRITORY OF UTAH,
Salt Lake County, ss:

We, L. S. Hills and J. T. Little, the sureties in the foregoing undertaking, being duly sworn, do each of us on our respective oaths say that we are each worth the sum of five thousand dollars (5,000) over and above all our just debts and liabilities, exclusive of the property exempt from execution.

J. T. LITTLE.
L. S. HILLS.

Subscribed and sworn to before me this 10th day of May, A. D. 1873.
[NOTARIAL SEAL.] JOHN T. CAIN,
Notary Public.

(Endorsed:) Joseph M. Cain et al. vs. Brigham Young et al. Undertaking on appeal. Filed and approved this 10th day of May, A. D. 1873. D. Bockholt, clerk. Brigham Young, appellant.
23 The following statement was endorsed as follows: Filed Oct. 23, 1874. Ed. B. McKean, clerk, by Willis P. McBride, deputy clerk.

Statement on motion for new trial.

In the third district court in and for the third judicial district of said Territory.

TERRITORY OF UTAH,
Salt Lake City, ss:

In the matter of the several applications of Samuel Stringfellow, George Stringfellow, William Jennings, Joseph M. Cain, Elizabeth Cain, Charles Crismon and Elizabeth T. Crismon his wife, Brigham Young, Nicholas Groesbeck, and the heirs of Willard Richards, deceased, for deeds from the mayor of Salt Lake City for a part of lot 6, block 69, plat A, Salt Lake city survey.

This is a proceeding by the above-named parties, under an act of the legislature of said Territory, approved February 14th, 1869, entitled "An act prescribing rules and regulations for the execution of the trust arising under an act of Congress entitled 'An act for the relief of the inhabitants of cities and towns upon the public lands, approved March 2d, 1867,'" to obtain deeds from the mayor of Salt Lake for the respective portions of the east half of lot 6, block 69, plat A, Salt Lake City survey, respectively claimed by said parties in their several declaratory statements, which said statements show the conflict between said claims. It was admitted by the attorneys of the respective parties on the hearing of said motion that a portion of Salt Lake City, embracing the premises in dispute, was entered by the mayor in pursuance of the said act of Congress on the 21 day of November, 1871.

The matter was appealed from the probate court of said Salt Lake County to this court in pursuance of the 4th section of the act of said legislature, and the cause being regularly called, was tried on the 20th August, 1873, before the court without a jury, on the respective
24 declaratory statements of the parties, and testimony and written proofs adduced, certified to this court by the probate court of said Salt Lake County in pursuance of said 4th section of said act of said legislature.

Which declaratory statements, testimony, and written proofs, as certified, are in the words and figures following, to wit:

Declaratory statements.

SALT LAKE CITY, U. T.,
December 11, 1871.

To the Hon. Elias Smith, probate judge of Salt Lake County, U. T.:

We hereby claim the following tract or parcel of land, situate in the city of Salt Lake, under the provisions of an act of the Territorial legislature, approved February 7, 1869, to wit: Sixteen feet and three inches east front by eight rods back of lot 6, block 69, plot A, commencing at a point sixteen inches north of the S. E. corner, thence west 8 rods, thence north sixteen feet and three inches, thence east 8 rods, thence south to the place of beginning.

Also, the right to use for road purposes the rod of ground on the west of the land herein applied for, all in section 1, township 1 south, range 1 west, and ask that we may be so adjudged.

SAMUEL STRINGFELLOW.
GEORGE STRINGFELLOW.

(Endorsed:) Adverse claimant No. 26, 3273, 2047, 3120. Application of Samuel and George Stringfellow, filed 11th day of December, 1871. Entered in book A, page 10. E. W. East, county clerk, per D. Bockholt, dep.

TERRITORY OF UTAH,
City and County of Salt Lake, ss:

To the Hon. Elias Smith, probate judge in and for Salt Lake County, and to all others whom it may concern:

I, the undersigned, am the lawful owner of possession of the following piece or parcel of land, to wit:

Part of lot No. six (6), in block No sixty-nine (69), commencing at a point five (5) rods south from the northeast corner of said lot, and running thence south twenty-five (25) feet, thence west one hundred and thirty-two (132) feet, thence north twenty-five (25) feet, thence east to the place of beginning, one hundred and thirty-two (132) feet, containing an *acre* of three thousand and three hundred (3,300) square feet, as plotted in plot A, Salt Lake City survey, to all of which said land I claim to be entitled to a deed in fee simple, in accordance with an act of the legislative assembly of the Territory of Utah, entitled "An act prescribing rules and regulations for the execution of the trust," etc., approved February 17, 1869.

WILLIAM JENNINGS.

(Endorsed:) Adverse claimant No. 199, 1950, 2647. Declaratory statement of William Jennings, claiming part of lot 6, block 69, plot A. Filed Dec. 13, 1871. Entered book A, page 67. E. W. East, county clerk, per D. Bockpolt, dep.

TERRITORY OF UTAH,
City and County of Salt Lake, ss:

To the Hon. Elias Smith, probate judge in and for Salt Lake County, and to all others whom it may concern:

The undersigned is the lawful owner of possession of the following piece or parcel of land, to wit: Part of lot No. 6, in block No. sixty-nine (69), commencing on the north line at a point one hundred and thirty-five (135) feet west from the northeast corner of said lot, and running thence west fifty-six (56) feet, thence south ten (10) rods, thence east forty (40) feet, thence north fifty-seven and one-half (57½) feet, thence east sixteen (16) feet, thence north one hundred and seven and one-half (107½) feet to the place of beginning, containing an area of eight thousand three hundred and twenty (8,320) square feet of ground, as plotted in the plot A, Salt Lake City survey, to all of which said land I claim to be entitled to a deed in fee simple, in accordance with an act of the legislative assembly of the Territory, entitled "An act prescribing rules and regulations for the execution of the trust," etc., approved February 17, 1869.

WILLIAM JENNINGS.

(Endorsed:) Adverse claimant No. 200–1950, 2647. Declaratory statement of William Jennings, claiming part of lot 6, block 69, plat A. Filed Dec. 13, 1871. Entered book A, page 67. E. W. East, county clerk, per D. Bockholt, dep.

TERRITORY OF UTAH,
City and County of Salt Lake, ss:

To the Hon. Elias Smith, probate judge in and for Salt Lake County, and to all others whom it may concern:

The undersigned is the lawful owner of possession of the following piece or parcel of land, to wit:

Part of lot No. six (6) in block sixty-nine (69), commencing at the northeast corner of said lot, and running thence south forty and one-half (40½) feet, thence west one hundred and thirty-five (135) feet, thence north forty and one-half (40½) feet, thence east to the place of beginning one hundred and thirty-five (135) feet, containing an area of five thousand four hundred and sixty-seven and one-half (5,467½) square feet, as plotted in plot A, Salt Lake City survey, to all of which said land I claim to be entitled to a deed in fee simple, in accordance with an act of the legislative assembly of the Territory of Utah, entitled "An act prescribing rules and regulations for the execution of the trust," etc., approved February 17, 1869.

WILLIAM JENNINGS.

(Endorsed:) Adverse claimant No. 210—1950, 2647. Declaratory statement of William Jennings, claiming N. E. corner of lot 6, in block 69, plat A. Filed Dec. 13, 1871. Entered book A, page 71. E. W. East, county clerk, per D. Bockholt, dep.

JAN. 22D, 1872.

TERRITORY OF UTAH,
Salt Lake City, County of Salt Lake:

To the Hon. Elias Smith, probate judge in and for said county:

The undersigned declares that he is the legal owner of possession of the following described piece or parcel of land, to wit:

Part of lot six (6), commencing sixty-eight and one-third (68⅓) feet south of the northeast corner thereof, and running south fourteen and two-thirds (14⅔) feet, thence west one hundred and thirty-five (135) feet to place of beginning, containing nineteen hundred and eighty (1,980) feet of ground, in block sixty-nine (69), as plotted in plot A, Salt Lake City survey, and claims as of right to be so adjudged that he may become possessed of the same in fee simple according to law.

BRIGHAM YOUNG, SEN.

(Endorsed:) Adverse claimant No. 1839, 1950, 2647. Declaratory statement of Brigham Young, sen., claiming part of lot 6, in block 69, plat A. Filed Jan. 23d, 1872. Entered Book B, pages 154 and 155. D. Bockholt, county clerk; F., deputy.

JAN. 26TH, 1872.

TERRITORY OF UTAH,
Salt Lake City, County of Salt Lake:

To the Hon. Elias Smith, probate judge in and for said county:

The undersigned declares that he is the legal owner of possession of the following described piece or parcel of land, to wit:

Part of lot six (6), commencing at the northeast corner thereof, and running south of one hundred and seven and a half (107½) feet, thence west one hundred and fifty-one (151) feet, thence north one hundred and seven and a half (107½) feet, thence east one hundred and fifty-one (151) feet to the place of beginning, containing sixteen thousand two hun-

dred and thirty-two and a half (16,232½) square feet, in block sixty-nine (69), as plotted in plot A, Salt Lake City survey, and claims as of right to be so adjudged that he may become possessed of the same in fee simple according to law.

BRIGHAM YOUNG, SEN.

(Indorsed:) Adverse claimant No. 1950, 199, 200, 210, 1839, 2647. Declaratory statement of Brigham Young, sen., claiming part of lot 6, in block 69, plat A. Filed January 27th, 1872. Entered Book B, page 188. D. Bockholt, county clerk.

SALT LAKE CITY, U. T., *Jan.* 31, 1872.

To the Hon. Elias Smith, probate judge of Salt Lake County, U. T.:

The undersigned, heirs of the estate of the late Joseph Cain, do hereby claim the following tract or parcel of land, situated in the city of Salt Lake, under the provisions of an act of the Territorial legislature, approved February 17, 1869, to wit:

The east half of lot six (6), in block sixty-nine (69), plat A, being 10 rods fronting north and 10 rods fronting east, in section 1, T. 1. S., R. 1 E., and ask that we may be adjudged the legal owners and become possessed of the same in fee simple.

ELIZABETH CAIN.
JOSEPH M. CAIN.
ELIZABETH T. CRISMON.
CHARLES CRISMON, JR.

(Endorsed:) Adverse claimant No. 2647, 26, 199, 210, 1839, 1950, 200. Application of Elizabeth Cain, Elizabeth T. Crismon, Joseph M. Cain, Chas. Crismon, j'r, heirs of J. C. Filed 14th day of March, 1872. Entered in Book B, page 386. D. Bockholt, county clerk.

APRIL 24, 1872.

TERRITORY OF UTAH,
Salt Lake City, County of Salt Lake:

To the Hon. Elias Smith, probate judge in and for said county:

The undersigned declares that he is the legal owner of possession of the following described piece or parcel of land, to wit:

Part of lot six (6), commencing at a point sixteen (16) inches north of the southeast corner of said lot, and running north upon the eastern boundary of said lot fifty-six (56) feet and two (2) inches, thence west eight (8) rods, thence north twenty-five (25) feet, thence west one (1) rod, thence south eighty-one (81) feet and two (2) inches, thence east nine (9) rods to place of beginning, containing eight thousand seven hundred and fifty-three and a fourth (8,753¼) square feet of ground, in block sixty-nine (69), as plotted in plot A, Salt Lake City survey, and claims as of right to be so adjudged that he may become possessed of the same in fee-simple according to law.

BRIGHAM YOUNG, SEN.

Applicant's attorneys appeared on the 25th day of July, 1872, and gave notice of withdrawal of his claim herein.

(Endorsed:) Adverse claimant No. 3120, 26, 3273. Declaratory

statement of Brigham Young, sen., claiming part of lot 6, in block 69, plot A. Filed 25th April, 1872. Entered Book A, page 471. D. Bockholt, county clerk.

26 TERRITORY OF UTAH,
City and County of Salt Lake, ss:

To the Hon. Elias Smith, probate judge in and for Salt Lake County, and to all others whom it may concern:

The undersigned are the lawful owners of possession of the following piece or parcel of land, to wit:

Portion of lot six (6), block sixty-nine (69), commencing at the southeast corner of said lot, running thence west one hundred and fifty-one (151) feet, thence north fifty-seven and one-half (57½) feet, thence east one hundred and fifty-one (151) feet, thence south fifty-seven and one-half (57½) feet to place of beginning in said block sixty-nine (69), plot A, Salt Lake City survey, containing eight thousand six hundred and eighty-two and one-half (8,682½) square feet, Salt Lake City survey, to all of which said land claim to be entitled to a deed in fee-simple in accordance with an act of the legislative assembly of the Territory of Utah, entitled "An act prescribing rules and regulations for the execution of the trust," etc., approved February 17, 1869. In trust, however, for the heirs of the estate of Willard Richards, deceased.

H. J. RICHARDS.
JOS. S. RICHARDS.
Agents for the heirs of the estate of Willard Richards, deceased.

(Endorsed:) Adverse claimant No. 3273, 26. Declaratory statement of estate of Willard Richards, claiming part of lot 6, block 69, plot A. Filed May 7, 1872. Entered Book C, pages 38 and 39. D. Beckholt, county clerk.

Adverse claimant.

TERRITORY OF UTAH,
City and County of Salt Lake, ss:

To the Hon. Elias Smith, probate judge in and for Salt Lake County, and to all others whom it may concern:

The undersigned, the lawful owner of possession of the following piece or parcel of land, to wit:

Being 16 inches east front by 9 rods west of the southeast corner of lot 6, block 69, plot A, Salt Lake City survey, to all of which said land I claim to be entitled to a deed in fee-simple, in accordance with an act of the legislative assembly of the Territory of Utah, entitled "An act prescribing rules and regulations for the execution of the trust," etc., approved February 17, 1869.

NICHOLAS GROESBECK.

(Endorsed:) Adverse claimant No. 3541, 2647. Declaratory statement of Nicholas Groesbeck, claiming 16 inches E. front by 9 rods W. of SE. corner of lot 6, block 69, plot A. Filed July 9th, 1873. Entered in Book C, pages 121 and 122. D. Bockholt, county clerk, per E. A. S.

By permission cause for not filing within the time prescribed by law deemed sufficient.

E. SMITH, *Probate Judge.*

27 *The evidence.*

Testimony in the matter of application of the heirs of the estate of of Joseph Cain, the heirs of the estate of Williard Richards, Stringfellow Bros. Brigham Young, sen., William Jennings, and Nicholas Groesbeck, respective applicants for a certificate of title for deed in fee-simple to portions of lot No. 6, in block 69, plot A, Salt Lake City survey.

WILLIAM K. PARKER, witness on behalf of the heirs of the estate of Joseph Cain, being first duly sworn according to law, on oath says:

How long have you resided in the Territory of Utah?

Twenty-two years next October.

Where did you reside in the year 1850, 1851, 1852, 1853, and 1854?

From October, 1850, till April 1st, 1851, I resided in Ogden, and from April 1st, 1851, to April 1st, 1852, I resided in Farmington; since that time I haveresided in this (Salt Lake City).

Were you acquainted with Joseph Cain during his life-time?

I was.

Do you know at what time Joseph Cain died, and where he died?

As near as I can recollect, he died in the year 1854, at his residence on Main street.

Do you know whether he had any children living at the time of his death?

He had two, I think. His son's name is Joseph.

Were these children grown or of tender age when Mr. Cain died?

They were quite young; I should judge the boy was not over ten years of age, the girl of about from thirteen to fifteen.

Do you know where the store of Mr. Jennings, commonly known as the Eagle Emporium, is?

I do.

Where was Mr. Cain's residence, that you have spoken of, with referrence to that store?

From three to five rods south.

How far was it from the south side of Mr. Cain's building to the south fence?

From twenty to twenty-five feet.

Was there any fence from the southeast corner of the plot which you have drawn to the northeast corner of the same, along East Temple street? And if so, describe that fence.

I am not positive whether there was any fence from the southeast corner of said lot to the south side of Mr. Cain's residence. There was an ordinary pole fence from the north side of Mr. Cain's residence
28 to a small house a distance of about 60 feet north from Mr. Cain's residence. There was also an ordinary pole fence from said small house to the northeast corner of said lot.

Do you know whether there was any fence from the northeast corner of your plot to the northwest corner? And if so, describe it.

When I first saw it there was a fence on it, but afterwards it came to rack, and a portion of it was taken by a wood-pile; the balance was a skeleton of a fence.

When did you first see that lot?

In the fall of 1850.

Was there any fence from the northwest corner of your plot to the northwest corner?

There was. The first half of the entire line was an ordinary pole fence, the remainder was a mud fence with poles on the top of it; this latter portion was built by Mr. Cain; the first I do not remember who built it. Mr. Cain employed me to repair that fence, and to do some other work also.

Was there any fence from the southeast corner of your plot to the southeast corner of the corral?

There was a fence the whole length from the southwest corner of the plot to the southeast corner.

Can you remember the distance between the southwest corner of your plot to the south side of Mr. Cain's residence?

From twenty to twenty-five feet, I think.

Do you know where Mr. Jennings' Eagle Emporium stands on your plot?

I do; it stands on the northeast corner.

Do you know whether the residence or the house in which Mr. Cain lived is yet standing?

It is.

Do you know who at present occupies the house?

It is occupied by M'r Callahan as a hardware store.

During the time you were repairing this fence you speak of, or at any other time while M'r Cain occupied the said premises, did you have any conversation with M'r Cain on the subject of his possession and occupation? And, if so, state the nature

(Objected to by M'r Williams, counsel for the heirs of estate of Richards.)

Setting on the wood-pile on one occasion conversing, I asked M'r Cain if that was his property. I recollect that he said that it was his own. I said that in time it would be valuable property.

To what property did this conversation refer?

It referred to all included in his plot.

Do you remember in what year that conversation occurred?

It was in 1852 or 1853; I think in 1852.

29 Do you know whether Joseph Cain died upon that property or not?

It is my impression that he did die there.

At the time of his death was there any other person occupying or living upon that property?

None but his family.

Did you ever have any conversation with Doctor Richards upon that subject?

Never.

The witness further states:

(Objected to by Williams & Young.)

That while this conversation took place I fully believed that this property belonged to Joseph Cain originally. I never heard any disputation whatever concerning that property until the last two or three years. Never supposed there would be any occasion until the young lad grew to manhood that the property was in dispute. I do not appear here before this court as a friend to one party and as an enemy to another.

Cross-examined by Mr. Williams, of Williams & Young, for the heirs of Willard Richards, deceased:

About how far west from the east line to the west line of Mr. Cain's inclosure?

About one hundred feet, as near as I can recollect.

What material was Mr. Cain's house built of?

The body of it was adobies.

Can you tell about the size of the corral?

I cannot.

State at what time you first became acquainted with Mr. Cain?

In the year 1850.

When did you first notice this lot?

In the year 1850.

Witness desires to state: That in the year 1850, on the 6th day of October, I drove my ox team upon Main street, and stopped between the northeast corner of my plot and the small house spoken of. Now desiring which way to go while standing there, I cast my eye on each side of the street and saw on each side of the street nothing but a potato and corn patch. This is the way I discovered the fence on the west side of the street. In company with another man we drove our teams west.

Do you know who lived on that lot at the time you first became acquainted with it?

I do not.

Do you know who lived there in the spring of 1851?

I do not. In the year of 1852 I became acquainted with one Mrs. Ogden, who then lived in the small house mentioned on said lot.

At the time you commenced working for Mr. Cain, was this house that is marked "Price's house," standing?

It was.

Do you know who was living there at that time?

I do not.

Who was the first person that lived in that house, to your knowledge?

A man by the name of Wallace.

You stated that the property within the inclosure, on your plot, was the property of Mr. Cain. Upon what do you found that belief?

When the pioneers came into this valley they drew for possession of a lot for homestead, and those that came in afterward could not procure a lot only by purchase. I do not know if Mr. Caine came in with the pioneers, but if he did not, I have every reason to believe that he became the owner of said lot by honest purchase.

What was Mr. Cain's business at the time you was working for him?

I think he wrote occasionally for the Deseret News office.

At the time you was working for Mr. Cain, was there a fence between the residence of Mr. Cain and the house Mrs. Ogden occupied?

There was a fence of about a rod or a little over, from the east line of said lot, running west.

About how far north of Mr. Cain's house was this fence?

About five or six feet.

Where was the wood-pile upon which you and Mr. Cain sat at the time you had this conversation?

A short distance northwest from Mr. Cain's residence. Mrs. Ogden lived in the small house when I first commenced to work for Mr. Cain.

(Here was presented Exhibit A made by this witness, containing the location and position of the lot and house thereon at the date referred to in his testimony.)

WILLIAM K. PARKER.

Subscribed and sworn to before me, this 17th day of August, A. D. 1872.

D. BOCKHOLT,
Probate Clerk.

SAMUEL MULLINER, being first duly sworn according to law, on oath says:

Were you acquainted with Joseph Cain, sen., during his lifetime?

I was.

Where did he reside at the time of his death?

He lived in his residence on lot 6, block 69, plot A, Salt Lake City.

31 Do you know at what date Joseph Caine took possession of that lot?

I do not. When I came in, in the year 1850, he was in California, as I understood. I do not know whether he came in in 1850 or 1851. Think he came in in the year 1851; soon after his return he commenced and built a house and lived in it till his death.

Do you know what year Joseph Cain came into this valley?

I believe he came in with John Taylor's company (pioneers) about the year 1847.

Do you know, up to the time of Joseph Cain's death, of any other persons occupying said lot?

I can not recollect.

Were you acquainted with Doctor Richards?

Very well.

You say you owned a lot south to that occupied by M'r Cain. Did you obtain your lot by purchase, and from whom?

I owned the third lot south from the one occupied by M'r Caine. I obtained it by purchase from M'r Harrison.

Do you know if D'r Richards acted in any official capacity in regard to the distribution of the property in Salt Lake City, and if so, in what part of the city?

I made M'r Harrison an offer for part of the lot I purchased; he told me he would let me have part of it; when I next saw him he told me he could not let me have part of it, because D'r Richards would not allow him to sell it. Doctor said if M'r Harrison was tired of his inheritance, to return it to him (D'r Richards). In conversation with M'r Harrison and Whitaere, they told me that that was the way they got their lots from the doctor.

(This answer objected to.)

Do you know if, during the time that Joseph Cain lived on the lot, any person ever laid any claim to it?

Never.

You say you lived a neighbor to Joseph Cain up to the time of his death. State if you know, during the time he lived on said lot, who was generally the reputed owner of said lot?

(Objected to by Williams and Young.)

Joseph Cain, by his neighbors and every one else.

Is Doctor Richards dead or alive?

He died long ago.

Did he die before or after Joseph Cain began living on the lot?

Some years after Cain began living on the lot.

Where did Doctor Richards reside at the time M'r Cain occupied said lot?

On the block above.

32 Did D'r Richards live on the next block from the time M'r Cain took possession until D'r Richards died?

He did.

Cross-examined by M'r Williams, for the heirs of the estate of W. Richards:

Do you know how M'r Cain became possessed of said lot?

I have no knowledge; but always believed that he received it as others received theirs.

Do you know whether there was any house on that lot before M'r Cain built his?

I do not remember anything.

When did you commence to reside on the lot you bought?

I took possession on the 1st of January, 1851.

How long did you reside there?

I think I remained there till 1857 or 1858; in all probability 1858.

Where have you since resided?

In American Fork.

Did you know Lyman Heinman?

I know the name; but do not recollect the person.

You have stated that M'r Cain was the generally reputed owner of that lot; did that general reputation of ownership extend to the whole lot?

That was my impression; and it was known as the Cain corner.

Was you acquainted with Robert Pixton?

Very well.

State on what lot he lived, in reference to the Caine lot.

On the adjoining lot south.

Did you know John Eddins?

Very well, from a boy.

State if you know where he lived at any portion of the time while you lived in the city.

In D'r Richards' family.

SAMUEL MULLINER.

Subscribed in my presence, and sworn to before me, this seventeenth day of August, 1872.

D. BOCKHOLT,
Probate Clerk.

MONDAY, *August 19th*, 1872—9 a. m.

Parties met pursuant to adjournment.

T. D. BROWN, being first duly sworn according to law, on oath says:

Where do you reside?

In the Fourteenth Ward, Salt Lake City.

How long have you resided there?

Twenty years.

Do you know a building in Salt Lake City called the Eagle Emporium? and if so, state where it is situated.

33 On the northeast corner of the block on which I live, known as the Joseph Cain lot.

How long have you known that property?

Since October, 1852.

Who was in possession of that lot when you first knew it?

Joseph Caine.

Did he live on it?

He did.

What part of the lot did he live on?

A little over half the distance from the northeast corner to the southeast corner of the lot.

Do you know the size of the lots in that part of the city at that time?

Ten rods by twenty rods.

Is the building known as the Eagle Emporium standing on part of the same lot that was occupied by Joseph Cain during his lifetime?

It is.

State what buildings and other improvements were on that lot during the time it was occupied by M'r Cain.

I took supper with M'r Craine the first night I arrived in the city, or shortly after. After supper he took me out; we walked northward to ward the northeast corner, thence westward to a fence or building subsequently known as Price's, then southward some two or three rods south of his (Cain's) house. He then talked to me of selling me a lot, which I now occupy. I do not remember any building on that lot at this time, except the residence of M'r Cain. Subsequently there were. Speaking of the value of lots, I asked him "How much has yours cost?" I think his answer was $320 or $380.

(To this statement by Cain counsel for the heirs of the estate of Willard Richards excepted.)

Did you hear M'r Cain state to you the size of his lot?

(Objected to.)

I knew the size of the city lots generally before I left England, but as to this there was no conversation.

Do you know how long M'r Caine continued to occupy this lot?

Up to the time of his death. I was with him the day before he died, but do not remember what year; he died on the same lot, in the house where I first visited him.

Was you acquainted with M'r Cain's family? If so, state what family he left, and their ages, if you can.

I think in 1846 or 1847 he took to himself a wife at my residence in England, now known as M'r's Richards. I have known to be reputed to be his children a boy and a girl; the one, I think, called Joseph, and the other recently married to M'r Crismon, respectively about 11
34 and 9 or 10 years of age when M'r Cain died. I do not know positively as to their ages; they were both born after M'r Cain left England.

Did you know D'r Willard Richards during his lifetime?

I did.

Was you intimate with him?

Not particularly so; met him socially, and in his office occasionally.

Did you ever have any conversation with D'r Richards in regard to the lot M'r Cain lived on?

Never. I had an understanding at the time D'r Richards, John Taylor, Parley P. Pratt, and others had the disposition of certain blocks and lots for money or otherwise, as seemed to them good. Joseph Cain, I think at that time, was working for D'r Richards, or in his office, at the time of my arrival in the city in 1852.

Can you state what improvements were on this lot of M'r Cain's at the time of his death?

Some time after the period spoken of (1852) a small building was erected north of M'r Cain's house, built by whom I know not, but occupied by a M'r's Holden as a residence and small store, and subsequently used by Jeter Clinton as a magistrate's office. I have an indistinct recollection of a small butcher-shop being kept there, but by whom I do not remember. Do not remember whether it was in the same building or close by.

Cross-examined by Williams and Young, for the heirs of the estate of Willard Richards, deceased:

State if you remember the day of your arrival in this city in the year 1852?

Between the first and fifth of October.

Do you know whether or not the walls of the building of M'r Cain, or any portion of them, are now standing, forming a portion of any building?

I think the Callahan house, or some other immediately adjoining that, contains a portion of the walls of M'r Cain's building.

State whether or not, according to your memory, the house of M'r Cain was on that portion of the lot now occupied by M'r Callahan's store.

I occupied a small store on the Groesbeck lot, bought of . North of my store was a saddler's shop, say 15 or 20 feet in front. Immediately north of that stood M'r Cain's house, now Callahan's store, or near there.

At the time you visited M'r Cain, on your arrival in this city, state whether or not there was any other building northward from M'r Cain's residence on that lot.

I do not remember any, as before stated.

Could you be positive as to the buildings on that part of the lot?

Yes; I can be positive there were none, to the best of my recollection.

35 State how far that lot extended westward from Main street.

I think it must have been eight or ten rods. The line should have run 20 rods, and should have intersected with Bullock's. There may have been some division of said lot before my arrival.

When you say it extended west eight or ten rods, you mean on M'r Cain's grounds?

I do.

Was there a fence on the western line of M'r Cain's grounds at that time?

I do not remember distinctly, but in coming from my lot to Main street I passed over two or three fences of three poles each. My lot was on the west side of the same block.

Did M'r Cain die in the same house that he occupied when you first visited him?

Yes, sir; I think so.

THOS. D. BROWN.

Subscribed and sworn to before me this nineteenth day of August, A. D. 1872.

D. BOCKHOLT,
Probate Clerk.

BOLIVAR ROBERTS, being first duly sworn according to law, on oath says:

I reside in the thirteenth ward, Salt Lake City. I first came to Salt Lake City in the year 1851. I have resided here most of the time since, from 1853 to 1857. I consider this my home. Purchased property in 1863.

Do you know a building in this city called the Co-operative Drug Store? If so, state where it is situated.

I do. I think it is situated 44 6-12 feet south from the northeast corner of First South and East Temple streets, on the west side of East Temple street, and south side of First South street.

Did you ever own the ground and building now known as the Co-operative Drug Store?

We, Mr. Bassett and myself, owned the ground and had the building built.

Of whom did you purchase that ground?
Of Brigham Young, sen.
When did you buy this?
I cannot be positive, but I think it was in the spring of 1864.
Do you still own it?
No, sir.
When did you sell it, and who to?
We sold it in 1868 or 1869, to the Co-operative Institution, as I understood it, but I think the deed was made out to Mr. H. B. Clawson.
Do you know anything about the ownership of that lot prior to the time you purchased?
36 I supposed at the time we purchased that the title was in President Young.
What led you to suppose so?
From the fact that he offered it for sale. I never examined the record or title.

BOLIVER ROBERTS.

Subscribed and sworn to before me this nineteenth day of August, 1872.

D. BOCKHOLT,
Probate Clerk.

Mr. ROBERTS recalled.

Do you know a building formerly called the Eagle Emporium? If so, state how it is situated from a building called the Co-operative Drug Store.
I do. It is situated immediately north, adjoining and fronting East Temple or Main street.
Who was in possession and exercised ownership over that building when you owned the building now known as the Co-operative Drug Store?
William Jennings.
Did you ever have any conversation with Mr. Jennings in regard to the title to that property? If so, state what that conversation was as well as you can.
(Objected to by Williams and Young.)
Some several years after he purchased the property the question of title was raised. How I got the information I cannot say. I talked to Mr. Bassett and Mr. Jennings about it on several occasions. The subject of the conversation with Mr. Jennings was about the title being imperfect. Mr. Jennings told me that he would see President Young and get him to perfect his title in order to secure us in ours.
Who did you understand claimed a title at the time adverse to yours?
(Objected to.)
I do not know that any one claimed it at the time. We feared that the heirs of the Cain estate might claim it.
Why did you have these fears?
I do not know, it is so long since I heard anything about it. I always understood that they had owned it. It might have been that some one in their interest told us. I supposed that the title was in President Young at the time, and Mr. Jennings agreed that he would see President Young and get him to perfect his title.
Please restate your answer to the former question.
I do not know, it is so long, why we thought so. It may have been we were told by some one that was in the interest of the Cain heirs.

At the time of purchasing the property we thought the title was in President Young. On being told their were doubts as to his title,
37 I had a conversation with W'm Jennings in regard to it. He said he would see President Young and get him (President Young) to perfect his title in order to secure us in ours.

How was it understood that Brigham Young was to perfect his title?

(Objected to.)

My impression was at the time, not being posted in law, that he was to perfect his title through Samuel Richards, the administrator of Joseph Cain's estate. I don't know anything about what M'r Jennings thought, but my impression was that he thought he had to perfect his title through the same source.

(Objected to this testimony generally.)

BOLIVER ROBERTS.

Subscribed and sworn to before me this 19th day of August, 1872.

D. BOCKHOLT,
Probate Clerk.

SILAS RICHARDS, being first duly sworn, on oath says:

Have you ever been assessor and collector in Utah Territory, and if so, during what period, and over what territory had you jurisdiction?

I was appointed assessor and collector in March, 1854, for Salt Lake County. I continued in office until 1858, inclusive, a period of five years.

What were the duties you performed in that office?

The assessing and collecting of Territorial and county taxes on all taxable property.

In the discharge of your duty did you assess and collect taxes on the land-claim or real property in Salt Lake City?

I did.

When you would apprise on lot or land claims in Salt Lake City, would you in your returns or elsewhere describe that property by one or other designation? If not, state how the assessments and returns were made.

In making the assessments I took down the name of each person assessed in the ward where he resided, and then assessed his entire and real property in bulk wherever it was situated in the county without designating the location.

In making the assessments would you make any inquiries about the ownership of various lots and premises?

The manner of assessing was to visit each dwelling, inquire the extent of a man's land-claims and improvements. If all he owned was there, I put the value on it; if he had anything elsewhere I usually took his own report, if I was not acquainted with the property, as the value of it.

Was you acquainted with Joseph Cain during his lifetime; if so, during what period, and where did he reside?

I was intimately acquainted with him. The last five or six
38 years of his life he resided on what is now known as the Emporium Corner, during the time of my being assessor.

If you know, state the year he died in, and where.

By reference to my tax-books I find that I assessed to Joseph Cain that property the first four years——

(Objected to the last sentence of this answer.)

the fifth year to the estate of Joseph Cain, and must have died during

the year 1857. This is the only means I now have of determining the time of his death. I don't know where he died.

Were your assessments made annually or not?

They were made annually after the same manner of the first year by visiting the premises of each resident.

Independent of any reference to your tax-books, do you remember of having assessed the property of Joseph Cain before referred to? and if so, state all the matters and things relating to said assessment as near as you can now remember.

I recollect distinctly of visiting Joseph Cain's residence on what is known as the Emporium, but at the time of my first assessments, I cannot designate precisely, it was not on the corner; it was south of what is now the Emporium building. M'r Cain showed me his improvements and I set a price on them from view. I think subsequently, that is, in subsequent years, I sometime took the assessment at the office from M'r Cain. I would not attach much value to the land; only the improvements. (The manner of assessing was to value the improvements, attaching little value to the land.)

At the time you made your first assessment, did you have any conversation with M'r Cain in reference to his property or the boundaries of the same? if so, state what the conversation was.

Nothing that I can recollect of in relation to the boundaries or the amount of land. He showed me his new house and his improvements.

Do you know anything about the extent of the boundaries of the property you so appraised? if you do, state it.

I have no recollection of the amount of land-claims described to me on the premises.

Do you remember about how far south of what is now known as Jennings' Emporium corner the residence of M'r Cain stood?

I do not.

Were there any other improvements between M'r Cain's residence and the corner?

I cannot now recollect of any. Before the lot was filled up in front and various places, I was very familiar with M'r Cain's property.

Did you ever appraise the land between M'r Cain's residence and the corner to any person else, or do you know of any one else ever paying tax on the same during the lifetime of M'r Cain?

39 I have no recollection of assessing any portion of the lot to any one else, except a small portion of the lot near the northwest corner with a little house on it, assessed, I think, to Jacob Longstroth.

How far from the present Eagle Emporium corner was it to the property house of M'r Longstroth that you assessed?

It may have been 10, 12, or 14 rods west of the Emporium corner.

Do you remember whether there was any fence between Longstroth's property and the Emporium corner running south?

I do not recollect of any.

You have stated that you was tax-collector. Did you ever collect any tax from Joseph Caine on the property which you state you assessed to him; and if so, how often, and for what years?

(Objected to.)

The tax was paid under the name of Joseph Cain for four years. I think the tax of 1858, that was assessed to the estate of Joseph Cain, was remitted by the county court in consequence of the death of M'r Cain.

Was D'r Richards living any portion of the time you were assessor?

I am under the impression that I assessed him in 1854, personally, but am not positive.

Did you ever appraise any portion of the lot on which Joseph Cain lived to D'r Richards?

I have no recollection of doing so.

Did you ever appraise any portion of it to the heirs of D'r Richards?

Not to my knowledge.

After the death of D'r Richards did you ever make any assessment of his estate; and if so, was the lot on which the Emporium now stands included in his assessments?

I am under the impression that I assessed the estate annually, and it was reported to me by Franklin Richards, administrator of the estate of D'r Richards. I think there was never any mention made of the lot referred to. In my official operation I never had any impression that the lot belonged to D'r Richards, or any intimation of it. (In my official operations I never had any intimation that D'r Richards owned that lot, or from any other source.)

Did you ever assess any improvements on the corner lot on which is now situated the Eagle Emporium, belonging to a woman by the name of Ogden? If so, state the facts in relation to it.

From indistinct recollection, I visited the residence of a M'r's Ogden, in the vicinity near by Joseph Cain's. I am under the impression, on inquiry, she did not own the property (the habitation she was occupying). I cannot say it was on the lot, but it was near the residence of Joseph Cain.

40 Did she state to whom the property did belong?

I presume that I inquired and was told, but do not recollect now.

Have you any recollection, during your administration as assessor, of assessing any portion of the east half of the lot on which the Emporium now stands to any person except to Joseph Cain or his heirs?

I have not.

If you had assessed any portion of that lot to any other person than Joseph Cain, would you be likely to remember it?

I think it is not probable that I would remember it unless I had been familiar with some one else owning it.

Do you know to whom was that property generally reputed to belong? (Objected to.)

I know nothing of who it was reputed to belong, except what I have heretofore stated in relation to my assessment; in part to Joseph Cain, and afterwards a small portion to Longstroth.

Cross-examined by Williams & Young:

You have stated that you was appointed assessor in March, 1854; state if you know the day.

I do not. I presume it was at the March term of the county court.

Do you remember at what time you commenced your first annual assessment for that year? And if so, state it as near as you can.

Immediately after I was appointed and gave bonds.

You stated in your direct examination that you assessed D'r Richards in person the first year.

It is my impression I did.

Can you state positively that you never assessed him personally more than one year? And if so, state it.

I cannot answer definitely, but am under the impression that I did not.

Did you ever assess the estate of Willard Richards to Joseph Cain as administrator?

I did not. I am under the impression that I transacted the business of the estate of Willard Richards with Franklin Richards as administrator or representative of that estate.

SILAS RICHARDS.

Subscribed and sworn to before me this 19th day of August, 1872.

D. BOCKHOLT,
Probate Clerk.

JOHN J. KELLY, being first duly sworn according to law, on oath says:

41 Did you know Joseph Cain in his life-time; and, if so, where did he reside, and how long were you acquainted with him?

I was acquainted with Mr. Cain before he immigrated to this country, in the Isle of Man, in the year 1852. In September I came to this country. I mean by this country Utah. From that time up to the time of his death I was personally acquainted and doing business with him.

Where did he reside in Utah?

The first place I knew him to reside was in a small house north of the house that he erected on a city lot on Main street in Salt Lake City. I presume it was on the same lot on which now stands Jennings' Emporium building.

How long did he reside in the house after you knew him?

To the best of my knowledge, he moved out and into his new house in that year.

Do you know how long he resided in the new house?

He lived there until the time of his death. I won't be certain, but he died, I think, in 1857.

When you first saw him living in the first house mentioned, were there any other persons living on the east half of the Emporium lot? If so, state who and what you know about the matter.

I cannot recollect any other person living on that half lot.

At the last-mentioned time what other buildings were on that half lot than the house Mr. Cain lived in?

There was no house on that lot from the house that Mr. Cain lived in, when I first saw him, running north to the corner.

Were there any other houses in any other direction on that lot?

If you mean the whole lot and not the half lot, I think there were one or more little houses on the west side of the lot.

Did you ever see any fence on the east half of that lot?

There were the remains of a fence there.

Did the fence, or remains of a fence, exist on the east side of the lot?

I think there was some on both, but the most on the north side.

Was there any fence extending from north to south, near the middle of the lot? And, if so, describe that fence.

I think there was a fence, but I do not feel able to describe it.

Through what portion of the lot did this fence pass? Where did it begin and where did it end?

It went from the north street, about the centre of the lot. I don't know exactly whether it ran through or not.

During the time you knew Mr. Cain in the city, do you know he owned and occupied the east half of the Emporium lot, and, if so, when and how long that occupation extended? And state how you know these facts.

42 On the 3d day of September, 1852, I made application to see Mr. Cain. I met him in the post-office. He said I was just the man he wanted to see, as he had bought a lot of D'r Richards, and had a building now under cover, and wished me to do some work in the same. He then came out of the post-office with me and went down to the building and showed me the work that he wished me to do. He then came out of the house and showed me his lot, and stated that he had more than he had really wished for; that if I wished to buy a piece that he would sell a piece to me if I could make the payments that would suit him, at the same time describing the north part of the lot (I mean north of house). I don't recollect any person claiming that lot north of his house up to the time of his death. I understood from his own statement that it was his lot.

(Objected to by Williams for the heirs of Willard Richards, to all the portions of the last preceding answer which repeats statements of Mr. Cain to the witness, on the ground of its being hearsay and irrelevant.)

What use, if any, was made of that portion of the east half of the lot not occupied by the buildings of Mr. Cain?

Mr. Caine used it at the time of his building and after, up to the year of 1855, as a lumber-yard. The way I knew that, I bought lumber of him and came in with my team and went out again in the north street with the lumber that I bought of him. This was in 1855. I knew him to use that portion north of his house for his own convenience.

Explain what you mean by his own convenience.

He occupied it in the shape of a wood-yard, lumber, and other material that he was building with.

How long did he continue so to use it?

Up to the time of his death.

How do you know that?

I worked on the house and was doing work about it.

After the house was completed were you ever on the premises; and, if so, how frequently?

I suppose I have been there as much as once or twice a week while he lived.

During the time of the completion of M'r Cain's house, up to his death, what use, if any, was made of the grounds between M'r Cain's house and the Emporium corner up to First South street?

I recollect some tradesmen carrying on business in the little house that M'r Cain came out of. I do not know that he made any particular use of that lot after, unless it was for the use of teams that were coming back and forth to his place.

43 How much lumber was there on the ground in 1855 when you bought some of M'r Cain?

I could not say, but there was some thousands of feet.

Was the lumber scattered about loose or piled up?

It was piled up, but not very snug.

On what portion of the half lot was the pile?

I would judge it to be about three rods north of his new dwelling and about five rods from Main street.

Cross-examined by Williams, for the heirs of Williard Richards:

What was M'r Cain's business during the time you was acquainted with him in this city?

His business was connected with the printing office (Deseret News).

Did he have any other business at that time?

I think he was acting as an assistant postmaster; that was all I knew of, unless it was his own private business.

Did he have a saw-mill or saw-mills?

I can't recollect that he had.

Where did he get the lumber that you have spoken of?

I can't say.

Do you know whether it was his own lumber or not?

I do not know.

So far as you know may he not have been selling that lumber as the administrator of Willard Richards, deceased?

I don't know. He sold the lumber to me; and that's all I know about it. I paid Joseph Cain for the lumber.

You have stated that you arrived in the country in September, 1852. What day of the month was it?

The second day.

Describe the house M'r Cain was living in at the time you arrived here.

He was living in a small house north of the house that he had built. I think the end of it was to Main street, with the door in the south. I think, if I mistake not, the window in the east end. The house was built of adobies, rock, and lumber.

You have stated, to the best of your knowledge, that M'r Cain moved out of that house during the year 1852. Could you be positive of that fact?

I wouldn't like to be certain.

How do you know there were no other persons living on the east half of that lot when you first saw M'r Cain there?

I concluded there was no one living there for I could see no houses.

44 Do you know of your own personal knowledge that there was no other person living there?

I don't know.

Do you know of your own knowledge what size the lots in the block were, and which way they were the long way?

Yes; the size of the lots on that block were 70 rods by 10 rods; that is, a whole lot. The long way of that lot was east and west.

Where was the house that you saw standing on the west half of the lot?

I think it would be on the east end of the west half. I should judge it may have been 18 or 20 feet from the north fence.

What kind of a house was that?

If I understand that house as I did the other, it would have been built of adobies.

Don't you know positively of what it was built?

I wouldn't like to say for the simple reason I didn't travel that street in these days.

Was that house standing when M'r Cain first showed you the lot?

I think it was.

Can you be positive?

I could not be certain that I saw the house at that time; but I am certain I saw it a short time afterwards.

At that time was there any other house on the west half of the lot?

I couldn't say.

Why, then, do you say there was one or more houses on the west half of the lot?

Well, the house I alluded to was behind the other. I meant they were on the side of the street.

The question was whether there was any other house on the west half

of the lot than the one you described. State whether there was any other at all.

Yes; there was one behind, south of the one I described. I can't say what it was built of. I thought it was a stable.

You have spoken of the small house M'r Cain was living in first, and the house he afterwards lived in. Now, state whether there were any other houses than those on the east half of the lot at the time you went into the employ of M'r Cain.

I stated before that I did not recollect seeing any other house. I am pretty certain there was no other house on the east half of the lot.

Who lived in the small house after M'r Cain moved out?

I do not know.

Do you know whether anybody lived in it afterwards?

No.

45 How much did Mr. Cain tell you he gave for that lot?

He never stated any sum to me.

How much and what kind of pay did he ask you for the part of the lot he offered to sell you?

He did not mention any sum. He said, as I stated before, that if I could make the kind of pay, he would sell me a piece of the lot.

Which part of the lot did he offer to sell you?

He pointed north from his house, standing on the sidewalk at the same time.

Did he state to you that he could sell all of the lot?

No.

What part did he say he owned?

He didn't say what part.

Did he say that he owned only a part of it?

No, sir.

Was there a fence at the west end of the lot that Mr. Cain showed you?

Yes, sir.

What kind of a fence was it.

I stated before that I was not able to describe it.

How do you know there was a fence there?

Well, I saw it.

If you saw the fence, why can't you tell what kind of a fence it was?

Weil, I was about ten rods off, and there was so little of it that I am not able to describe it. I could see some parts that were standing up.

Could you see any poles or boards at all?

Yes; I would take them to be poles.

Do you know the difference between poles and boards?

I presume I do.

Will you answer directly whether you do or not?

Yes, sir; I do.

Will you state positively whether those were poles or boards that you saw?

I can't; for I was too far off.

How far were you from the fence?

In the neighborhood of ten rods.

How far was that fence west from the front of the lot on Main street?

In the neighborhood of ten rods.

Was it in the day-time when you looked at it?

Yes. It was not quite dark; it was getting late in the evening.

What kind of a fence was on the east side of the lot, as near as you can tell, from the remains you have stated were there?

A pole fence.

46 I wish you to state about the size of Mr. Cain's new house that you worked on.

Well, I won't be positive about that; I suppose it would be about forty feet long, two-story building, four rooms on the lower floor, and four rooms again above, with a hall in it. The stairs went right up from the front in the hall, and we could pass right through the hall by the staircase.

What kind of work was it you done on the house?

The first work I done in the house was cutting hearthstone and laying them down; next was plastering; the next would be cutting steps in front of the house at that time.

Did you plaster all the eight rooms?

No, sir. I think I plastered four rooms, one down stairs and three up stairs.

What kind of stone did you cut the hearthstone and steps out of?

Red stone.

Are you a stone-cutter and plasterer by trade?

Yes, sir.

Where did you live after you came in here, and up to the time of Mr. Cain's death?

I lived in the seventh ward of this city.

Where do you live now?

In the same place that I lived in then.

Were you on Mr. Cain's lot frequently during his lifetime?

Yes.

Did you never, at any time, when you were on that lot, get close enough to the west fence to ascertain whether it was made of boards or poles?

I guess I was close enough, but I never felt interested enough to know what it was made of.

But you are positive there was a fence there, are you?

There was something they called a fence.

Was it a fence?

It was a fence, but a bad one.

Re-examined direct:

When you first visited Mr. Cain the first day after your arrival in this country, having known Mr. Cain in the Isle of Man, if there had been any persons living on that lot other than Mr. Cain, do you think you would have remembered it or not?

Yes; I think I would.

Do you remember whether there was any person other than Mr. Cain living on that lot at that time?

I cannot recollect any person living there but himself at that time.

47 When you first went on that lot, and during the time you was working on the house of M'r Cain, were there any stables on the lot?

Yes; I think he had a stable to the west, somewhere against this fence that I have been alluding to west of the little house he lived in.

Re-examined cross:

Do you know whether there was any stable there or not?

There was a building there, and M'r Cain told me it was a stable. I was built of either lumber or slabs.

You mean by lumber, sawed lumber?
Yes.

JOHN J. KELLEY.

Subscribed and sworn to before me this 22d day of August, 1872.
D. BOCKHOLT,
Probate Clerk.

WILLIAM H. HOCKINGS, being first duly sworn according to law, on oath says:

Did you know M'r Cain during his lifetime?
I did.
How long did you know him and where did he reside?
He resided on the half lot, as I understood, belonging to him, now known as the Eagle Emporium lot. I became acquainted with M'r Joseph Cain in the year 1854. I knew him from that time up to his death.
During that time did he live all the time in the same place?
He did.
During the time were you frequently on the premises of M'r Cain.
Very often, indeed.
Was there any fence on the east side of M'r Cain's premises?
I don't now remember.
Was there any fence on the north side of that half lot? And if so, describe what kind of a fence, and how far it extended.
I don't remember there being any fence at all on the north.
Was there any fence on the west side of that half lot?
There was.
Where did it commence and how did it run?
It commenced, I should judge, about 10 rods west of the Emporium corner. It ran south from that point—I should judge about 10 rods.
What kind of a fence was it?
A mixture of poles and boards.
Did that fence extend as far south as M'r Cain's residence?
It extended farther south than that and south of his residence.
Was there any fence on the south side of M'r Cain's house? And if so, describe that fence.
48 To the best of my knowledge, there was. I rather think it was a board fence.
What location did it bear to the southern line of that half lot?
I should judge it was about the south line of that half lot.
How far back west from East Temple street did it run?
I should judge about 10 rods.
How many houses were on that lot during M'r Cain's lifetime?
I don't remember.
Were there any houses on the lot at all?
I know of his house, and this was about the only house that I can remember.
On what portion of the lot was it situated?
Some distance south from the Eagle Emporium.
Were there any stables on the lot, and, if so, on what portion?
There was a stable, if I remember correctly, some distance back and west from the house.
Was it due west of the house?
I am not certain.

Do you know how much ground M'r Cain occupied? And if so, state the quantity.

My understanding from him and other persons was that he occupied a half lot.

During the time that M'r Cain lived there, do you know of any other persons having occupied the half lot?

I remember no one but his own family.

How frequently did you visit the house of M'r Cain during his life-time?

About one hundred times.

Cross-examined:

You say that you became acquainted with M'r Cain in 1854; do you remember what season of the year it was?

I could not state positively whether it was spring or fall, but could tell by referring to some letters.

How do you know it was in the year 1854?

By leaving the city and going to Farmington in that year?

Was it prior to or subsequent to the death of D'r Richards that you became acquainted with M'r Cain?

It was prior to his death.

You say it was either in the spring or fall of 1854. Can you not state positively which of those two seasons of the year it was?

I cannot.

You say it was prior to the death of D'r Richards that you became acquainted with M'r Cain. State, then, when M'r Richards died.

I do not remember.

49 Then how do you know it was before his death you became acquainted with Mr. Cain?

I think I went to Dr. Richards' house with Mr. Cain, and before he died. I remember going there at least once, and saw Dr. Richards at that time.

When was it you first understood that Joseph Cain owned that lot?

After I became acquainted with Mr. Cain.

How long after?

I do not remember.

You stated in your direct examination that there was an alley-way on the south side of Mr. Cain's house. Was that alley-way fenced on both sides, and about how wide was it?

I don't remember.

Then what reason have you for stating it was an alley-way?

I have seen teams go in back and forth south of said premises, through that alley-way, at different times.

Was there any fence on the north side of M'r Cain's house, and, if so, of what was it built?

I don't remember whether there was or was not a fence.

You say you think there was a board fence on the south side of M'r Cain's house. How far was that fence located from his house, and was it on the north or south side of this alley?

The fence was on the north side of the alley and several rods from the house.

Was there any line fence between Joseph Cain and M'r Pixton's lot, lying south of M'r Cain's lot?

I don't remember the position of M'r Pixton's lot; I knew it was south of M'r Caine's lot.

Will you state whether there was a fence on the Emporium lot?

There was some kind of a fence.

Where was the alley-way you have spoken of located, as to this fence?

Near the fence; on which side I can't remember.

Can you not state positively whether there was any house or not on the east half of the Emporium lot, besides M'r Cain's dwelling?

I cannot.

Did you know that Joseph Cain was the administrator of Willard Richards, deceased?

I did; ever since Richards died.

Who were the other persons from whom you understood that that lot was Cain's?

I understood it from M'r's Cain and two old ladies at Farmington; one by the name of Braddock, the other I do not remember, a relative of W'm Clayton. I have heard it from several others, but do not remember the names.

Did you ever hear Joseph Cain say it was his? If so, state the time and language.

I don't remember the time, but in speaking of improvements he was going to make, he would say: "I am going to make so-and-so on my lot."

How do you know he meant that lot?

He would say in different language, "On this lot of mine."

Was it warm or cold weather when you became acquainted with M'r Cain?

I don't remember.

What time of the year did you go to Farmington?

I don't remember.

How long did you live there?

In the neighborhood of two years.

How do you know it was in 1854 you went there?

I arrived in Salt Lake City in 1853 and went North in 1854.

About how far was it from M'r Cain's house to the north line of the lot?

It might be three or five, or seven or eight rods. I can't tell exactly. My impression is that it was somewhere near the center of the lot.

How do you remember so particularly about the south and the west fence?

I have noticed that fence south, the west fence, because it went so near the stable. I remember the stable because I frequently put my horses in.

Describe that stable, its location, and the material it was built of.

I think it was an adobe building, not far from the fence, running north and south on the west side of the lot. It may have been about one rod east of the west fence, and from one to three rods north of the alley.

W. H. HOCKINGS.

Subscribed and sworn to before me, this 23d day of August, A. D. 1872.

D. BOCKHOLT,
Probate Clerk.

JOSEPH J. TAYLOR, being first duly sworn according to law, on oath says:

Did you know Joseph Cain in his lifetime?

Yes, sir.

Where did he live?

He first lived in the seventh ward, Salt Lake City. Then he moved onto a lot now known as the Emporium building lot.

In what year was that?

51 He moved on the lot in the seventh ward in 1849, and remained there, I think, two or three years; then he moved to the other lot.

How long did he live on the Emporium lot?

Until he died.

When he lived there, were you very frequently on his premises?

I was there, I think, as often as once a month, sometimes oftener, sometimes not so often.

Do you remember what improvements and fences were on that lot during the time Mr. Cain lived there?

There was, as near as I can remember, a fence running north and south, 8 or 10 rods west of East Temple street. I think the fence run from First South street to opposite the south side of the house Mr. Cain lived in. There was another fence that run back from the southwest corner of the house joining this other fence. It may have been south of the house, but am not positive. There was a small fence at one time on First South street. I don't remember of any being on Temple street.

When Joseph Cain moved on the lot, did he go into the house in which he died or not?

I think not. There was a small house that was afterwards used as a shoe-shop and a tin-shop, near the center of the lot, but I think a little nearer the north corner of the lot. I think it was back of the co-op. drug store. (The witness pointed out, on Exhibit B, No. 47 as the store referred to.) I believe Joseph Cain lived there. I am positive in my own mind that I have been to Joseph Cain's house when he lived in that little house.

At that time who occupied the east half of the Emporium lot?

I don't think there was any body living on that half lot except Mr. Cain.

Who, at that time, occupied the space embraced within the fences which you have described?

When he first moved there, my impression is that no one but him occupied the lot. Afterwards, I think, there was another house put up, in which Mrs. Ogden resided.

During the time Mr. Cain lived on the said lot, did he make any use of the space west and north of his house, and, if so, what use?

I have no recollection of him using that. There was a wood-pile there, but the space was thrown open.

Have you been on that lot at a recent date?

Yes, sir.

Did you observe a long adobe privy?

Yes; there is a double privy there.

How near did the west fence which you have described come to that privy?

52 I think within a few feet of the west side of that privy, but I am not certain.

Is there any fence near the center of the lot now standing running south from the south line of the Emporium lot?

There is a fence standing there, but I can't swear that the west fence joined it. It was within a few feet of it, either east or west.

Do you know who owns the property on which that fence running south now stands?

I think it is a partition fence between Mr. Piston and Martin.

Cross-examined:

Could you be positive that the west fence on the Emporium lot is west or east of the privy you have spoken of?

I could not.

Do you know how far it was from the south line of Mr. Cain's house to the south line of the lot?

I can't tell. My impression was that the house was on the south line of the lot.

Can you tell how long Mr. Cain lived in the little house you have spoken of?

I could not exactly. A year or a year and a half, I should think.

You say you don't remember M'r Cain using the space north of his house after he moved into his new house?

I do not.

Were these fences that you have spoken of standing at the time M'r Cain moved there?

I think there was a pole fence on the south side of the lot, and afterwards there were boards nailed on to it. The west fence, if I recollect right, was a small pole fence with sage brush wove in. My impression was that these were there at the time M'r Cain moved there. I think Eddins put the brush in. I think this fence extended clear through to First South street before M'r Cain went there.

JOSEPH J. TAYLOR.

Subscribed and sworn to before me this 23d day of August, 1872.

D. BOCKHOLT,
Probate Clerk.

JOHN WHITNEY, being first duly sworn according to law, on oath says:

Did you know Joseph Cain in his lifetime?

Yes, sir.

Where did he reside?

In the fourteenth ward in this city.

What part of the ward?

On or near the corner where Jennings' store now stands, called the Emporium corner.

53 When did M'r Cain first move there?

He resided there when I first got acquainted with him, in the fall of 1852.

Can you tell where, on the lot, did the house stand on which he resided at that time?

When I first became acquainted with him he was about moving out of the little house near the center of the lot into his new house he had partially furnished.

Where, on the lot, did the small house out of which M'r Cain moved stand?

I think it stood right west of No. 47, marked on Exhibit B.

Were you ever in the employment of M'r Cain, and, if you were, in what capacity?

Yes; I think I did all his mason-work after that date—all he ever had done.

Did you do any mason-work on that lot for him?

Yes, sir; I built some kitchen on the west side of the adobe house; I tore down an old oven and rebuilt it a little farther south than the house; I built another small house on the south of the house of M'r

Cain. I don't remember what it was used for. I couldn't say positive as to its location.

What year was it you built the little house referred to?

I think it would be about the year 1856.

Were there any fences on the east side of that lot during the lifetime of M'r Cain?

Yes, sir; there was, when I first knew the lot.

Describe that fence.

It was a common pole fence.

Did that fence extend to the Emporium corner?

Yes, sir; I think it did.

Was there any fence on the north side of the lot? and, if so, describe it.

Yes, sir; there was a common pole fence on the north side of the lot, I think.

Was there any fence through the center of the lot? and, if so, describe it, and which way it ran.

Yes; there was a common pole fence run from north to south of his lot.

How far west of East Temple street was that fence?

I couldn't state; I judge it was about five rods; I think it parted him and M'r Eddins.

Was there any fence on the south side?

I do not remember what was on the south side.

54 During the time you knew M'r Cain, who occupied the ground in the limits you have described?

M'r Cain.

During his lifetime, were you very frequently about his house or not?

Yes; I was, very frequently.

Did you know M'r Cain before he came to this country, and if so, where?

No, sir. I saw him on a mission in England, but did not speak to him.

At whose instance did you do the mason-work on said lot of which you have spoken?

Of M'r Cain.

Did you ever receive any pay for that work; and, if so, from whom?

I received pay a number of times from M'r Cain.

Cross-examined:

In what direction from the little house that M'r Cain was first living in, when you first knew him, on that lot, was the dwelling-house he subsequently occupied?

I am not positive about the location, but I think it was a little east and north.

Who occupied the little house after M'r Cain moved out?

I do not know.

Can you state whether or not any other person but M'r Cain occupied that lot or a portion of it during the time he lived there?

He was the only person there during these early times, and for several years. I don't know but what M'r Cain rented some of his rooms.

Is your memory distinct and clear as to the north and south fences?

It is to the north fence, but I am not so positive about the east.

JOHN WHITING.

Subscribed and sworn to before me this 24th day of August, 1872.

D. BOCKHOLT,
Probate Clerk.

JOHN TAYLOR, being first duly sworn according to law, on oath says:

How long have you resided in the Territory of Utah?

Since the settlement, which was in 1847.

Was you acquainted with M'r Cain during his lifetime?

I was.

How long did you know him, and where did he reside?

55 I knew him in the Isle of Man, in Nauvoo, and afterwards in this country since the time he came here up to his death.

Do you know when he came here?

I think it was in 1847 or 1848.

Do you know where he resided in this Territory?

He lived somewhere in the seventh ward, Salt Lake City, for some time. He then moved up on Main street, in the neighborhood of Jennings' corner.

What year did he move there?

I can't say what time, but was there in an early day. He was engaged in the printing-office, and moved up there to be more convenient to his work.

Were you acquainted with Willard Richards in his lifetime?

I was.

Are you familiar with the manner in which the early settlers obtained their lots? and, if so, state the manner in detail.

Our coming out here was under the direction of the church authorities. We came out under an organization of the church. The city plot of Salt Lake City, as well as the five and ten acre lots, were laid out under the supervision of this authority. The five-acre lots were balloted for, and, I think, the ten-acre lots also. The city lots were distributed according to the decisions of counsel under the presidency of President Young. Some parties had a certain amount of lots placed in hands to distribute among their friends, for the purpose of allowing those who desired to be neighbors the privilege of living together in the same neighborhood. These lots were thus distributed by those several parties at their will. I had a district of land placed in my hands which I distributed in that manner. The parties thus receiving the land generally paying for the survey, and receiving therefor small certificates from Thomas Bullock, the dimensions of which were generally about one by three inches. I think sometimes there were records made of these slips, and sometimes there was not. People were very careless in those days, and there was generally but little attention paid to titles.

Who besides yourself had placed in their hands for distribution lots in Salt Lake City, and, if so, was Willard one of them?

I don't know positively. M'r Richards, I know, did place a number of persons on lots, and I suppose his authority was the same as my own. I suppose he had the authority for doing so from the fact of his placing parties on lots. I know of his placing Thomas Bullock, Robert L. Campbell, and, I believe, Longstroth, as well as his brother, Levi Richards, on lots. There were never any lots drawn in Salt Lake City, and whenever one settled in the city, he did it under some one's order.

After the first distribution the lots were generally disposed of
56 under the direction of President Young, Heber C. Kimball, and perhaps in some instances under the direction of William Richards.

Where are the lots situated in Salt Lake City which M'r Richard distributed?

In the fourteenth ward, I think. Longstroth's and Levi Richards' lay beside each other on the Council House block. Thomas Bullock's is on the block east of the Townsend House, and on the block on which Jennings' Eagle Emporium is situated.

If you know, will you describe how, after the distribution of lots in Salt Lake City, they were transferred from one party to another?

It would be very difficult to answer that question except generally. Sometimes it would be done verbally, and handing possession from one to the other. Sometimes parties would exchange lots by exchanging possession; sometimes they would change their certificate, what we usually called Thomas Bullock's deed. In such instance, they would be sometimes transferred in writing, and sometimes not; and sometimes parties would give writing, not possessing any themselves. Horses and lots, lands, were frequently disposed of as we dispose of houses and cattle. It simply became a matter of honor between the parties thus transferring their possessions. I bought myself between 50 or 60 acres of land on that principle, and held it for some time, and I could scarcely make the party I purchased from believe that a writing of any kind was necessary. At length he handed me his certificate of survey.

After the first assignment, were those assignments ever changed by those in authority, and, if so, how was it done, and why?

If they were changed, it was generally because they were not improved by the parties possessing or holding them. If a man did not fence his lot or otherwise improve it, or if he left and went to another part of the county, not having improved it, it was competent to place another person on the lot.

Do you know in those days whether there were any books or record of titles kept?

I think there was a small book kept by Thomas Bullock, the names of the parties and the number of his lot placed opposite.

Do you know what that book was called?

I do not know.

Cross-examined:

Among the lots you distributed did you let Joseph Caine have one?

I do not remember. I distributed a great many; some fifty or sixty lots. I could not say whether Joseph Cain got one from me or not. My jurisdiction extended over part of the seventh ward.

Did he improve and live on his lot in the seventh ward?

I think he did.

57 Did any of the early settlers have given or distributed to them more than one lot?

Yes, sir; I had three lots, most of which I possess at the present.

Did those who had placed in their hands lots for distribution, pay for the surveying of any except those they kept for their own use?

That would depend on circumstances. Sometimes, as a matter of accommodation, it might be done, as in any other business transaction. In many instances people disregarded it and did not pay for them. We did not consider any informality sufficient cause in those days to interfere with the possessory right.

JOHN TAYLOR.

Subscribed and sworn to before me this 26th day of August, A. D. 1872.

D. BOCKHOLT,
Probate Clerk.

WILLIAM TAYLOR, being first duly sworn according to law, on oath says:

Were you acquainted with Joseph Cain during his life-time?

Yes, sir.

Where did you first become acquainted with him, and how long did you know him?

I became acquainted with him in Nauvoo. He moved to this Territory in 1847, and I knew him from that time to his death, which occurred in 1855 or 1856, I think.

Where did he reside in this Territory?

He resided in the seventh ward, Salt Lake City; and afterwards he moved into the fourteenth ward.

What part of the fourteenth ward?

On the lot that Mr. Jenning's emporium stands upon.

When did he move there?

I can't tell exactly; but think it was in 1851.

What sort of a house did he move into?

I think it was a small adobe house.

On what portion of the lot was it situated?

I understood him to say that he had bought the east half of the lot; and this house was near the center of it.

(All that portion that M'r Cain told the witness was objected to on account of its being hearsay.)

How long did he live in that little house?

I don't think I could tell within a year. He built his new house and moved into that as soon as it was finished.

How long did he live in the new house?

He lived there until his death.

Did his family ever live in the new house?

Yes, sir.

58 Were there any fences on that half lot while Joseph Cain resided there? And, if so, describe them.

The east side of the lot, as near as I can recollect, was what we call a post and rail fence, made of poles. I think afterwards there were some boards nailed on in some shape, but do not recollect how they were placed. On the north side there was a shabby kind of a fence of poles, as near as I recollect. I could not describe any more fences on that lot.

During M'r Cain's life-time, were you frequently at his house or not?

Yes, sir.

State, if you know, how much of said lot M'r Cain occupied while he lived there.

The way I understood, from himself, he occupied one-half while he ived there.

(Answer objected to, being hearsay.)

Was the declaration you refer to at the time he was in possession or living on the lot?

It was.

State the circumstances which led you to understand that such was the case.

(Objected to for irrelevancy, and to elicit hearsay evidence.)

I was talking of going into business with another party, and he considered we ought to have a place on Main street. I proposed to M'r Cain to make an exchange of part of my lot, one block west. That was the reason why he explained to me and showed me his property. He favored it in the first place, but I did not enter into business with the other party and failed.

You say you proposed to exchange a portion of your lot; what portion were you to get of M'r Cain's lot?

No, sir; I made the proposition to him to exchange a portion of his for a portion of mine.

What portion of his?

His proposition was to let me have 20 feet front on Main street, running north and south by 10 rods west, for 40 feet front by 10 rods back of my lot.

Where were you when these propositions passed?

On the sidewalk, near the corner where M'r Jenning's building now stands (emporium).

Did you have any conversation with M'r Cain at any other time on the subject of his ownership and occupation? And, if so, state what that conversation was.

He told me, that in consequence of his working in the printing office it was too far to walk; and that his property would be more convenient to his work.

59 When the offer of exchange was made, where did he reside?

He resided on the lot in his new house.

Do you know whether he ever rented any portion of that lot to any one?

If I recollect aright, he had a couple of men working in the old house, but I couldn't tell whether he rented it or hired them.

Cross examined:

What year was it you made the proposition of exchange to Mr. Cain?

I think it was in the fall of 1854.

On what part of the lot were you to have the 20 feet?

On the northeast corner.

Did you say it was before Mr. Cain moved from the seventh ward that he told you he had purchased this corner?

No, sir; it was previous to this conversation of exchange.

How long previous?

That I could not state.

Do you know of your own personal knowledge that Mr. Cain used the little adobe house you have mentioned, after he moved out of it?

I know that there were two men there; that is all I know about it. I don't know whether Mr. Cain used it or not.

WILLIAM TAYLOR.

Subscribed and sworn to before me this 26th day of August, A. D. 1872.

D. BOCKHOLT, *Probate Clerk.*

WILLIAM W. ALLEN, being first duly sworn according to law, on oath says:

Were you acquainted with Joseph Cain during his life-time?

I was.

Where did he reside?

When I first became acquainted with him, in 1846, in England. I came to Salt Lake City in 1851, and found Mr. Cain living in this city, on the half lot where the Eagle Emporium now stands. In the early part of 1852, I think in February, I made an agreement with Mr. Cain to go and live with him at his house; he resided then on this half lot.

How long did he reside on that lot?

I cannot exactly tell; he resided on that lot until his death.

When you first knew him, where on the lot and in what kind of a house did you find him living in this Territory?

60 He was living in a small adobe house, situated very near the center of the lot; I think a little north of the center.

How long did he reside there?

I can't tell; I boarded with him in that house eight months or more.

Did he live in that house up to the time of his death?

No, sir; after his new house was completed he lived there until his death.

Where was his new house situated?

As near as I can remember, it was about 25 feet from the south line of the lot.

Were there any fences on that lot, and, if so, describe them, while Mr. Cain resided there?

Yes, sir. I repaired them all around, the three sides anyhow. The east fence was of pole and posts, commencing at the south line of the northeast corner of the lot. On the north side it was a similar fence, but considerable shabby. On the west, right in the middle of the lot, is kind of slabs and boards and brush and everything; this commenced ten rods from the northeast corner, running south to Mr. Pixton's lot.

At whose instance did you repair these fences?

At Mr. Cain's.

Did you repair them more than once?

Yes; several times during the eight months while I lived there.

Was there any fence on the south side of the lot?

There was. It was a similar one to the north and east fences. We always called it Pixton's fence.

Where did that fence begin, and where did it end?

It began on East Temple street and ran west. I am not positive how far west it ran, but know it went ten rods, as far as Mr. Cain's lot.

Have you been on the ground recently?

I was in the tin-store this morning.

Could you tell the place where the west fence you have described passed?

I could not, it has changed so much.

Were there any other houses or buildings, besides the small adobe house and the one Mr. Cain lived in, that you have described, on that half lot, while Mr. Cain lived there?

There was a cow-house built of slabs and logs, which stood right west and north of the old house in which Mr. Cain first lived.

Was there any use made of that house; and, if so, by whom?

Mr. Cain used it as a cow-house. I used it myself. I had a yoke of cattle a portion of the time.

Did that house stand north or south of a line dividing that half lot from east to west?

61 It was on the north of that line. There was a path right close to the northwest corner of the half lot, which was used to take in wood, lumber, logs, adobes, clay and sand, by M'r Cain. This road from the bars passed west of this cow-house.

To whom did the bars belong?

M'r Cain.

To whom did these fences you have described belong?

M'r Cain.

Do you know who occupied the land embraced within the square?

M'r Cain.

What use did he make of the space?

He used a portion of it for a bake-house. The space toward the Emporium corner was not used for much of anything; the back of it was used for a kind of a wood-yard and lumber-yard, and I have seen old wagons there. He rented the space south of him to a man by the name of Topham for a butcher-shop. I don't know that he ever rented any other portion, except the bake-house, which he rented to a man by the name of Willis.

During the time M'r Cain lived on the Emporium lot, do you know who owned the east half of the same?

Joseph Cain.

How do you know that fact?

In the first place M'r Cain told me that he loaned D'r Richards money when he came back from California, and that the doctor had turned him over the half lot in view of the money. During the time that I lived with M'r Cain I became acquainted with D'r Willard Richards. I acted as teacher of the block M'r Richards lived on. He told me that he was glad that M'r Cain had found a man that would help him up with his house, and was glad that he was improving his lot. I have heard D'r Richards call it the Joseph Cain lot several times.

(All that portion that purports to repeat the statement of M'r Cain objected, on account of it being hearsay and irrelevant.)

Have you ever heard D'r Willard Richards and M'r Cain talk in relation to that half lot? And if so, repeat that conversation.

I have, repeatedly, previous to putting up the new house. I have heard M'r Cain tell D'r Richards his plan of improving the lot, and building of his house, bake-oven, and fencing.

In any of these conversations did you ever hear D'r Richards claim the lot?

I never did.

When did these conversations, and the one you had with D'r Richards, occur? Was it before or after M'r Cain took possession of the half lot?

It was after.

62 At the time these conversations occurred, who was in possession of that half lot?

M'r Cain.

From the time M'r Cain took possession, up to the time of his death, do you know of any one but him being in possession of that half lot?

I do not.

Did you ever hear any one claim ownership over it?

I did not, except M'r Cain.

During the lifetime of M'r Cain, did you, or did you not, frequently visit that property?

In the latter part of November, 1852, I moved to Provo City, Utah County. Excepting my visits to the city, where I always staid with M'r Cain, I never visited the premises.

At the time you had the conversation with D'r Richards, which you have related, did M'r Cain own, occupy, or was he then improving any other property you have spoken of?

Not to my knowledge.

If such had been the case, would or would you not have been likely to know it?

I think I should, because at that time I made M'r Cain's house my home.

Besides improving the fences on the premises, did you ever do any work, and if so, what, and at whose request?

At M'r Cain's request I built him a bake-house and oven. I also laid the foundation for his new house, and laid the adobies to the top of the chimneys. By his request I have whitewashed and repaired the old house in which he first moved several times, and was paid by M'r Cain.

Did you do the last-mentioned work before or after he moved out of it?

Before. I never did any afterwards.

What was the nature of the improvements you made on the old house?

Painting it up and whitewashing, and repairing foundation.

Cross-examined:

How do you know the north end of the west fence was 10 rods west of the northeast corner of the lot?

Because it was in the middle of the lot?

How do you know it was in the middle of the lot?

Because the lots are 20 rods long, and 10 rods was the middle of the lot.

Is that the only reason you have for stating it was in the middle of the lot?

That's sufficient as far as I understand it. I don't know that
63 I ever measured it myself, but heard M'r Cain call it half a lot, and everybody else who spoke of it.

Do you know of your own knowledge that the fence was in the middle of the lot?

To the best of my ability I do. Looking at the squareness of the fence, it is ten rods square. I believe it was. I have heard Mr. Cain say it was half a lot, and I have heard Dr. Willard Richards say it was, and further I don't know.

Then of your own personal knowledge you don't know whether it was the middle of the lot or not, do you?

Not within a foot or two. I don't think my eyes could deceive me that much. I am a practical builder and surveyor of laying out building lots, and I can tell whether a lot is square or oblong.

Do you say on your oath that you can tell with your eye within a foot or two of the center of a line 20 yards long?

I can tell within a rod.

Will you answer my question directly?

I shall not answer that question within a foot or two. I could within 10 feet.

What year was it you heard this conversation between Mr. Cain and Dr. Richards?

In 1852.

How many times did you whitewash the old house Mr. Cain lived in first?

Twice I believe.

Are you certain of that?

Yes, sir.

At what season of the year was it?

It was in March, 1852, the first time. The second time I couldn't be positive. It was some time in the fall before I left.

How do you know that those fences were Mr. Cain's?

Because Mr. Cain called them his whenever they wanted repairing. He asked me to repair them for him, which I did.

Do you know whether he built any of them?

I do not.

Where did Dr. Richards live when you lived at Mr. Cain's?

He lived on the lot north, across the street; on the lot Kimball & Lawrence's store is now on, I believe.

What kind of a house did he live in?

It was an adobe house.

Where was the bake-house from Mr. Cain's new house?

It was on the west adjoining his house.

Did Mr. Cain move into the new house before you went to Provo?

No, sir, if I recollect right.

64 Was the butcher shop, you have spoken of, there while you lived at Mr. Cain's?

It was there before I left.

Can you state positively the man's name who kept that shop at that time?

Mr. Topham.

Did you visit the city often after you went to Provo?

Not very often. In the year 1854 and 1855 I was back in the States. I went in 1854, and came back in the latter part of 1855.

Do you know of Mr. Cain using the small house for any purpose after he moved out of it?

No farther than from hearsay.

Who lived west of Mr. Cain on the *on the* west half of the lot?

I don't remember any house being there until we came to Mr. Bullock's.

Re-examined direct:

In your cross-examination you stated that you heard Dr. Willard Richards refer to the lot occupied by Mr. Cain as a half lot. Now, in what connection was that declaration made, as near as you can remember?

I heard the doctor and Mr. Cain talking in reference to the size of the lots being very large for that part of the city. I heard the doctor refer to that lot as Mr. Cain's, and never heard him refer to it in any other manner than Mr. Cain's lot.

W. W. ALLEN,

Subscribed in my presence and sworn to before me this 26th day of August, 1872.

D. BOKHOLT,
Probate Clerk.

AUGUST 27TH, 1872.

Parties met pursuant to adjournment.

SOPHIA TAYLOR, being first duly sworn according to law, on oath says:

Did you know Joseph Cain during his lifetime?

I have known him since 1840, in Liverpool, England.

Did you ever know him in Utah Territory?

Yes, sir. He visited us in Liverpool. He emigrated from there to America; I don't know where; but returned in 1846; and again emigrated in 1847, having married my youngest sister. We traveled together, and arrived in Utah on or about the 8th of October, 1847.

Were you acquainted with him after your arrival here?

I was acquainted with him up to the time of his death. I was there the night he died. During his life I staid with him about half of my time.

Where in Utah Territory did he reside?

He first resided at the Old Fort; he had a tannery there. He
65 moved onto a lot in the Seventh ward, Salt Lake City. As near as I can recollect, he moved to the Seventh ward between the

period of 1847 and 1849. In the spring of 1851 I staid with him in the Seventh ward, about eight weeks. In the fall of 1851 he moved to a lot on Main street, in Salt Lake City, known as the Emporium lot, into a little house. He lived on that lot until he died, which was in April, 1856, I think.

Do you remember where on the lot that little house was situated?

I can tell exactly; it was some little distance from the north and east fence.

How long did he remain in that little house?

I can't tell certain; but am certain he lived there for two winters.

Where did he go after he moved out of the little house?

He moved into a new house which he had erected on that lot, in which he lived until the time of his death.

During the time he lived on that lot, do you remember whether there was any fence on the east side, or any other portion of the lot?

On the east side there was a pole fence; on the north side of the lot there was a pole fence. I do not recollect of there being any fence on the west side; there was some old rubbish there, and an old log building. I don't remember of there being any fence on the south side of the lot until a short time before his death. There was a good fence, leaving a kind of an alley-way south of the bake-house, which was intended for teams to go through.

Do you know how much ground M'r Cain occupied?

He always seemed to occupy all of the one-half lot until M'r's Ogden came to live there and built her house. I thought it was all his until I asked what it meant about some one going to build there. I said to him, I thought, Joseph, you owned all of this lot. He said that President Young had sent her (M'r's Ogden) down to him to measure her off a building spot. He said if any other person than Brigham Young had requested it, he would not have done it. He seemed very much hurt in his feelings.

(Objected to all that part of the last preceding answer in which the witness gives the statements of M'r Caine.)

While Joseph Cain lived on said lot, do you know who was the owner of the east half of the lot on which the Emporium now stands? and if you know state your means of knowledge.

During the eight weeks that I was staying at Joseph Cain's, when he lived in the seventh ward, Salt Lake City, D'r Willard Richards would come down there every few days on his little pony. He would converse with Joseph to the effect that he wanted Joseph to move up near to his place of business (the post-office), Joseph being sickly. D'r Willard Richards told him that if he would move up there he would
66 give him a lot. My sister seemed to feel very bad about it, and objected to it very much. He (Joseph) told his wife that he would go and see the lot, and tried to pacify her. He went there next day and came home about 5 o'clock. He said, "Lizzie, I have been looking at the lot." She asked him what kind of a lot it was. He said it was full of gravel, and that they would not be able to raise any more vegetables. With that my sister sat down and cried because he said they couldn't raise any more vegetables.

(Objected to all that part of the last preceding answer that purports to be statements of other parties).

How long was that before M'r Cain moved into the Emporium lot?

I can't tell exactly; it was perhaps about two months. D'r Willard Richards was so anxious for them to move, that they did so much sooner than I expected.

Did you ever hear D'r Willard Richard say anything about M'r Cain's ownership after he moved there?

No, I did not. The first Sunday after M'r Cain moved there, he fetched me over and asked me what I thought of his new place. I told him that I didn't like the looks of the place, it being a bare and rough looking place.

(Objected to as before).

During the time M'r Cain lived on said half lot, did you ever hear any person claiming that lot?

No one but Joseph Cain.

Cross-examined:

Did D'r Richards give that half lot to Joseph Cain?

He said that if he would move up there he would give him a lot. I never knew whether it was a whole or half lot. I have heard him say this a number of times.

Do you know what lot he meant?

No, sir; I did not until he showed me the place.

Do you know that Joseph Cain got that lot from D'r Richards?

I have stated all I know about it. D'r Richards said he would give him a lot, and I understood that that was the lot with the little house on.

Do you know that M'r Cain got the lot from D'r Richards?

Yes, sir; I do know it, D'r Willard Richards gave a great many persons lots.

How do you know it?

From the fact that D'r Willard Richards said he would give him a lot, and that soon after he moved onto it and lived there; and I lived there myself five weeks at the time.

And from what Joseph Cain told you do you know he got that lot from D'r Richards?

Yes, sir.

67 Then, from what do you know that?

Because D'r Richards gave a great many lots. My husband also gave a great many lots.

Do you know that was the lot Joseph Cain went to see a short time previous to his moving from the seventh ward?

Yes, sir; I always believed it. It answered the description. There was nothing but a bed of gravel.

Do you know anything about where M'r Cain got that lot, except what you have heard?

No, sir. D'r Willard Richards said he would give him a lot.

Did you ever hear the D'r say he gave him that particular lot?

No, sir; I have heard him say he would give him a lot.

Did your husband give M'r Cain the lot he lived on in the seventh ward?

I do not know whether he did or not.

What did M'r Cain do with his lot in the seventh ward?

I do not know.

What was done with the little house after M'r Cain moved into his new house?

I do not really know.

On which side of the little house was the house M'r's Ogden built?

It was on the south of the little house, and north of the new house.

You say the bake-house was south of M'r Cain's residence; how far south was it?

The bake-house was put up first, and the building afterwards added.

It was all under the same roof. There was a confectionery in the front part of the building.

How many rooms were in the new house altogether at first?

There were two front rooms and kitchen and bake room and four rooms above.

On which side of the alley or wagon-lane was the south fence put up a short time before M'r Cain's death?

It was on the south side.

Did you ever know of a lady by the name of Braddock living on any portion of the Emporium lot?

Yes, sir; she lived some time in the little house after Mr. Cain moved into the new house. My sister told me there were two old ladies living there by the name of Franklin and Braddock.

Did you know how they came to be living there?

No, sir.

Did you know whether either of them was a wife of D'r Richards?

Afterwards I understood that they were wives of D'r Richards.

Do you know of M'r Cain ever using that portion of the lot north of his new house after moving into it?

68 There was a great deal of truck and stuff around—lumber and empty barrels. I used to notice this coming through the alley-way from the north.

Do you know whether M'r Cain ever paid anything to D'r Richards for that lot?

No, sir; I do not.

Did you ever hear anything else than that D'r Richards gave him the lot?

No, sir; I did not.

Re-examined direct:

How long did M'r's Franklin and M'r's Braddock live in the little house after M'r Cain moved out?

I haven't the slightest idea.

Were they living there at the date of D'r Richards' death?

I have no idea.

Do you know whether either M'r's Franklin or M'r's Braddock was D'r Richards' first wife?

No, sir; I knew his first wife.

Re-examined cross:

Do you know when Dr. Richards' first wife died, and where?

I think she died in Nauvoo. Never saw her in this country. I came here direct from Liverpool in 1847.

SOPHIA TAYLOR.

Subscribed and sworn to before me this 27th day of August, 1872.

D. BOCKHOLT,
Probate Clerk.

ELIZABETH WHITAKER, being first duly sworn according to law, on oath says:

Did you know Joseph Cain during his life time, and, if so, where did you first become acquainted with him and where did he reside?

I first became acquainted with him in 1855, when he crossed the plains. I came to his house. He resided on Main street, Salt Lake City, on the lot on which now stands the Eagle Emporium.

Do you know how long he lived there after you became acquainted with him?

He lived there until his death, which occurred in April, 1857.

Did you ever live in his family?

Yes, sir; I lived there until within two months of his death.

During the time he lived there will you describe the fences, if there were any, on that half lot?

There was a fence that run north and south at the back; there was no fence in the east, and there was none on the north.

Where did that western fence you have spoken of begin, and how far did it run?

69 It commenced on the north line of the lot, close to Price's house and First South street, and run south to Pixton's lot, as I understood.

During the time you lived with Joseph Cain did you ever hear him and Willard Richards have any conversation?

Dr. Willard Richards died before I came into the valley.

Did you ever have any conversation with Joseph Cain about the boundaries of the lot? And, if so, state what it was.

I have heard him say that that was his lot. In conversation I asked him why he did not fence his lot outside like the others had, and plant it with trees. He said it was too gravel'y and it wouldn't grow anything, but he said he intended to have that for buildings.

(Last question and answer objected to, as tending to and calling out hearsay evidence.)

How much of that Emporium lot did Mr. Cain use while you lived there, and what use did he make of it?

The lot runs over to the fence close by Price's house and east from Price's house to where the Emporium building now stands. He used it for wood and lumber, and the carriages used to drive in there. All north of the house he used to use for drying clothes and putting up clothes-lines. I have dried clothes on these lines.

During the time you lived there did either Mrs. Franklin or Mrs. Braddock live on the lot?

No, sir.

Cross-examined:

Did any person besides M'r Cain's family live on that lot while you lived there, and, if so, what house did they occupy and who was it?

There was a shoemaker and a whipmaker working in the little house; that was all. It was old man Shearer (whipmaker) and a man by the name of Snellgrove (shoemaker). I think they were there when I came and I know they were there when I left.

On which side of Price's house was the west fence?

It was east of Price's house.

Was that fence there when you came there?

Yes, sir.

What kind of a fence was it?

I think it was a kind of a board, but I don't know as I can tell exactly.

her
ELIZABETH + WHITAKER.
mark.

Attest:
P. L. WILLIAMS.

Subscribed and sworn to before me this 27th day of August, A. D. 1872.

D. BOCKHOLT,
Probate Clerk.

70 THOMAS BULLOCK, being first duly sworn in due form of law, on oath says:

How long have you resided in Utah Territory?

Since September 22, 1848.

In what portion of the Territory have you resided most of the time?

In Salt Lake City, in what is called the fourteenth ward.

During the time did you ever hold any official position, and, if so, what?

County recorder for Salt Lake County.

Were you appointed or elected to that office?

The first time I was elected by the voice of the people. As soon as an election was held under the provisionary government of the State of Deseret was organized I was elected. When the Territory of Utah was organized under the organic act I was re-elected, and was again elected at the August election, 1856. On the 10th of September, 1856, I was sent on a mission to England. Since that time I have had nothing to do with the books. My election by vera voca was on the day of my arrival, September 22d, 1848.

During the time from September 22d, 1848, up to the time you started on your mission, did any person else hold the office of recorder for Salt Lake County except yourself?

No, sir.

Are you familiar with the manner in which the lots of Salt Lake City were acquired by the first settlers? And, if so, state fully how it is done?

The day I arrived in the valley there was a public meeting under the Bowery. A city was to be laid out here to be called Great Salt Lake City. A vote was taken that Henry G. Sherwood should be the surveyor to lay off the city into lots and blocks, and that Thomas Bullock be the recorder to keep a record of the several lots and to whom they were given. President B. Young and Professor Orson Pratt started, in connection with Sherwood, from the southeast corner of the Temple block, and run the meridian line due south, where the skeleton of a city was laid out. I made the first plot for it, commencing a book or half a quire of foolscap paper stitched together with some kind of thread—the strongest I could get hold of—in which were put down the number of the block and lots in the city. When the exact location of the Temple block was described, President Young told his councilors to pick where they wanted to locate, giving them the first choice. Willard Richards and Orson Pratt chose the block south of the Temple block. Wilford Woodruff chose southwest of the Temple block; John Taylor a little further southwest, on the same block—it was set off for him, he not being there; and Amassa Lyman
71 had a place put off for him on the west. President Kimball then chose the bench north of the Temple block, when President Young said, I will take what is left, pointing east of the Temple block, and selected the place where the white house now is on the bench. President Young then gave out the lots to his friends and relations on the east side of East Temple street. He had but few relations; the majority were his friends. Presidents Young and Kimball were the principals in giving out all the lots in the city. Dr. Willard Richards gave out the lots on the line of blocks running on the west side of East Temple street, and south of Temple block about five or six blocks, when the lots were put down in this book of promises, which is the book I above referred to, when people would come and get their certificates, for which they paid one dollar for surveying and fifty cents for recording.

What, if anything, was done to entitle an individual to a certificate?

Each of the persons who had the giving out of lots would tell their friends where they were going to live themselves and where they could have a place. They would then get their certifiates. The persons giving out these lots would tell me to put down the persons' names opposite the lots given to them respectively.

When you received such instructions, what would you do?

Put them down and obey orders. Sometimes the persons found these lots would come into a marsh, and complain, and want them changed. Others would complain when their lots were on a gravel bed. Their complaints were always listened to, and other lots given.

When these changes were made, what would you do?

Strike out the names of the persons first set down, and put his name in another place, opposite another lot. If they made complaints again, Prests. Young or Kimball would ask the person if he knew where there was a vacant lot. The book would be referred to, and their names put down again. After a little an adobe office was built, immediately south of where the council-house now is. I recollect when Prests. Young and Kimball had been a little more than usually plagued by the brethren, President Young told me to stick up a notice on the office door; the words were: "All manner of twisting and turning done here." In a few minutes I had the notice put up, and they laughed at me.

After the first assignments or giving away of the lots, how did the respective possessors generally transfer their lots one to another in those early days?

Sometimes it was done by what they called swapping tickets; sometimes they would go up to Brother Heber and tell him that they wanted to make a change. When Brother Heber would hear their statements, he would generally say, Do it for him, Thomas. And sometimes they exchanged without making any alteration on the record book. President Young gave them the liberty to change round until they
72 were satisfied, and could get where they wanted, as he used to say he wanted the brethren to be as happy as they could.

At the time these lots were distributed, about how many inhabitants were there in Salt Lake City?

Not far from three thousand.

Was the arrangements you have spoken of entered into by common consent, or not?

It was.

Had it anything to do with the church organization or not; and, if so, what?

Those of the quorum of the twelve apostles who were here were meeting and counciling almost every day what was the best to be done for the people under the circumstances we were placed. The people, by vote in public meeting, conferred the above authority on the parties named. Almost every man in the Territory was a Latter-day Saint; those not in the church were just as agreeable and willing as those in.

Do you know who gave away or distributed the lots on block 69, plot A, Salt Lake City; and, if so, who?

I do; Pres. Willard Richards.

Of what was he president?

He was one of the first presidency of the church.

Do you remember to whom lots in block 69, plot A, were given?

I think Harrison owned lot 1 first; then Lawrence (Andrew L.), got lot 2; Adams, lot 3; Robert L. Campbell, lot 4; Thomas Bullock, lot 5; Robert Paxton, lot 7; Lot 8, to one of the Whitakers (Moses or John).

In regard to lot 6, Blazard was the first one on there, I believe, and the Heinmans levied on it; their names were never on the book. Longstroth was afterwards on the extreme west. The east half was put down to Joseph Cain, and Eddins had a piece that was afterwards called the Price lot.

Was there any record made of these conveys by you on the books?

When Dr. Richards would tell me to put a name down I would do so. When he told me to make a change I did so. No changes were made upon the books only when ordered by those having authority to order, and those *and those* authorized were those I have previously mentioned.

Did D'r Richards ever direct you to set down the east half of lot 6, block 69, plot A; and, if so, to whom?

It was put down to Joseph Cain upon the books of promises; D'r Richards ordered this.

Did you do it?

Yes, sir; I always obeyed orders, or tried to.

73 Did you and the Dr. have any conversation in relation to the setting down of that half at the time you done so?

He walked into the office and told me to put it down to Joseph Cain, as he did in other instances.

What year was it Dr. Willard Richards directed you to transfer the east half of lot 6, block 69, plot A, to Joseph Cain?

There were no transfers at that time. In the fall or winter, 1848 or 1849, he told me to put his name down (Joseph Cain) on the book; that was all that was required then.

Where was Joseph Cain residing at that time?

I can't tell whether it was in the old fort or in the seventh ward that he was living. Joseph Cain was grumbling about being so far from his work.

Do you know whether Joseph Cain ever lived on lot 6, block 69, plot A?

Yes, sir; for the reason that on the 8th day of December, 1852, my wife was living there for a few weeks, and D'r Willard Richards married her to me on the 9th, following.

Do you know when Joseph Cain first moved on the said lot?

I don't know for certain. If I had access to old copies of the Deseret News I could tell. I think it was in 1849 or 1850. I know certain that he was there on the 10th of September, 1856, and was there on the 9th of December, 1852, in peaceable possession.

Where was Joseph Cain living when you set the east half of lot 6 down to him?

He was then in the seventh ward near the old fort.

How long after you set the east half of said lot down to him was it before he moved on to said lot?

Not many weeks.

Did you ever have any conversation with D'r Willard Richards in his lifetime on the subject of Joseph Cain moving on to that lot 6? and, if so, state as near as you can recollect.

I have heard the doctor say I must have Joseph nearer to me than he is to his (Cain's) business, he being in the employ of Willard Richards in the Deseret News and post-office. He made such a statement several times, both before and after he ordered me to put his name down to the east half of lot 6.

Did you hear Dr. Richards and Joseph Cain in their lifetime talk on the subject of said lot?

I have no doubt but what I have heard them talk several times, but

cannot repeat any conversations. I know the doctor was visiting there frequently.

74 Do you know whether these persons who had the giving out of the lots, and who made the first choice of the lots, ever after this first choice ever changed their selection made for themselves?

They did not change, except Orson Pratt, who sold part of his lot for a yoke of cattle when he went on a mission.

Under the arrangements of the distribution of the lot was there any amount or number of lots agreed on which each individual should have?

No, sir.

During your administration as recorder was any part of the east half of lot 6, block 69, plot A, put down to Dr. Willard Richards?

If I had the books I could tell all about it. No portion was put down to Dr. Willard Richards to the best of my recollection. The present remnant of the Book of Promises is an unfinished copy. Lot 6 is blank. It does not even show the west quarter to Longstroth and Price, and I know that they were down.

Have you any remembrance of any person besides Joseph Cain ever having been set down for the east half of lot 6, or any portion of it?

Not after the doctor had told me to put down to Joseph Cain the east half.

Did Doctor Richards, in the distribution of the lots, ever give any one less than a whole lot?

In the first place they were whole lots, but afterwards they were divided up and into half and quarter lots. The lot south of me, lot No. 4, was divided into quarters.

Were the lots in those days of much value?

No, sir; they were not. Dr. Richards told me I might have any lot that he had to dispose of. He mentioned especially this lot 6, for convenience' sake, but I would not have it on account of it being nothing but a bed of gravel and the bed of the creek.

Will you describe the books in which you kept the early records of which you have spoken?

The first was called the Book of Promises. I was ordered to put a man's name down against a lot, when that person paid for recording, or promised to do so. It was then recorded in the Alphabetical Record Book, a portion only of which is now in existance, and which is now in the recorder's office, and which are now called the loose sheets of the Book of Promise; was half a quire of paper and stitched together. The alphabetical book was a bound book, containing three, three and a half, or four quires. Until 1852 there were no transfers. These were the books we used up to 1852. After 1855 there was a form of transfer which was recorded in a long, narrow, and thick book, with a red back to it, and we called this Book C.

Do you know where the Book of Promises, in which you set the east half of lot 6 to Joseph Cain, now is?

75 No, sir; I do not. I have not seen it since 1856. Then I knew they were all safe.

In whose hands did you leave those books?

I left all the books, plots, and papers when I went on my mission in the hands of Leo Hawkins, my deputy. He died during my absence.

Have you ever looked for that book, the Book of Promises, in the recorder's office of Salt Lake County?

I have seen a few loose sheets there, as they are called there. Where the remainder is I know not.

Are these sheets a part of the Book of Promises?

A part of the Book of Promises and a part of the Alphabetical Record Book.

Is the (figures) numbering on the pages of the Transfer Book A, records of Salt Lake County, in your handwriting, and did you place said figures on said pages?

My figuring begins at page 20; those previous are not mine, nor do I know who put them there.

Did you know D'r Richards' first wife; and, if so, what was she?

Her maiden name was Janette Richards, and after she married her name was Janette Richards.

Where did she die?

In Nauvoo.

After her death did he marry again; if so, whom?

He did. He married Eurelia Pearson at Nauvoo, a lady from Massachusetts, I think.

Do you know whether she is still living or not?

She is dead.

At the death of D'r Richards did he have a wife?

He had several.

What was the name of his first wife living at the time of his death?

He had living at the time of his death Susanah Septiot, Sarah Longstroth, Mary Peart, Sister Braddock, and Sister Franklin, and Rushton.

Which of these did he marry first?

He first married Susannah.

Do you know whether she had any children or not?

She had not.

Do you know whether she is still living or not?

She was living on the 30th of May, 1872.

Cross-examined:

Had D'r Richards any other wife living at the time he married Susannah?

I can't tell.

76 Do you know whether she (Janette) died before he married Susannah?

I do not.

You say that after D'r Richards told you to set down the east half of lot 6, block 69, plat A, to Joseph Cain, no portion of it was ever set down to any one else. Was it ever set down to any one else before that?

I believe Blozzard had his name down, but for how much I don't know; I think it was for the whole of it. It was never put down previous to that to any one as the east half.

Can you be positive it was Blozzard to whom the lot was put down first?

I almost can, because there was some grumbling at the time. I am sorry the missing books are not at hand, or I should tell all about it.

Can you be positive that lot was put down to no one else than Blozzard previous to putting down the east half to Joseph Caine?

Not to my recollection. At first full lots were given, and afterwards it was divided into quarters and halves.

Who paid for the recording of the lot?

I don't think any one paid for the recording of that lot.

You say Henry G. Sherwood was elected surveyor at the time you was first elected recorder. How long did he remain in that office?

He went to California from here; but was here on the 5th of September, 1854. He remained in office until the time he left; the exact time he left I cannot state.

Were you authorized to collect fees for him for surveying?

Yes, sir.

Did you collect any such fees for him after he left here?

I have no recollection of any person paying me a solitary cent for him after he left.

Did you receive fees for him before he left? And, if so, state the fact.

Yes, sir; I received scores of them before he left. I collected fees for him and he for me while we were in office.

Did any person ever pay you the survey fees for surveying lot 6, block 69, plot A?

No, sir; when I last settled with M'r Sherwood, after D'r Richards' death, he was indebted to the Deseret News office for his subscription. I was also collecting for the Deseret News, and the fees due M'r Sherwood for surveying lot 6, block 69, the lot on which the council house stands, and the lot west of that, I credited him with, and used it to square up his indebtedness to the Deserot News office. There was no money passed either way.

Was D'r Richards indebted to the surveyor for the surveying of those lots.

77 Sherwood had surveyed those lots, and must be paid by some one. As the doctor had those two lots, and having transferred the west quarter of lot 6, block 69, to Stephen Longstroth, his father-in-law, that just squared off accounts. And because he had transferred the west quarter of lot 6, block 69, to his father-in-law, I charged him with surveying the lot.

In what manner did D'r Richards transfer the west portion of that lot to M'r Longstroth?

The doctor and Stephen Longstroth transferred their lots by signing a printed transfer.

Did D'r Richards own that lot?

He had originally the giving away of a whole tier of blocks, some 5 or 6, and this lot was one of those blocks.

Did he give away this lot just as he did other lots that he distributed?

He did. Technicalities were not thought of.

Did he ordinarially give away lots by giving transfers?

No, sir; as I stated, I was ordered to put it down.

Why did he do it in this case?

That I am not responsible for; I did as I was told, and would have been considered impertinent to ask questions. The new law about transfers had just been enacted a short time before; I think in 1852.

Did those parties that gave out lots to settlers in the first distribution ever secure valuable considerations therefor from the parties receiving the lot?

If good will is called a valuable consideration, then they all received valuable consideration, otherwise they did not; no money was paid.

At the time D'r Richards made the transfer above-mentioned with M'r Longstroth, did M'r Longstroth make any transfer to D'r Richards?

Yes, sir.

What of?

A piece of land off the north end of Longstroth's lot, and nearest to the doctor's houses.

Were these mutual transfers between Longstroth and D'r Richards an exchange of parcels of land, and one piece given for the other?

I suppose so. No idea of ten cents passing between them.

Did you understand at the time those transfers were recorded by you that they were exchanging the parcels of land described in them?

Yes, sir.

Was the record of the transfer from D'r Richards to Longstroth the earliest record made by you of his (Longstroth's) ownership of any portion of lot 6, block 69, plot A?

78 Yes, sir; to the best of my knowledge. If I had those books I could tell all.

Previous to the time of recording that transfer, do you recollect Stephen Longstroth's name ever having been put down to that lot or any portion of it?

Stephen Longstroth had lot 2, on the block north of 69. I have no recollection of his name ever having been down on lot 6, block 69, plot A, before that time.

Do you remember saying yesterday, in your direct examination, that the present remnant of the Book of Promises is an unfinished copy, and don't show any name to lot 6, block 69? It don't even show the west one-quarter to Longstroth, nor Price's piece, and I know they were down, or using words to that effect.

I remember using that language, and I confirm it this morning.

How do you reconcile that statement with the one made this morning, that you don't remember Longstroth's name ever being put down to that lot or any portion of it until the records of the transfer above mentioned from D'r Richards to Longstroth?

The transfer is on record in the transfer-book. Longstroth's name would then be put down upon the Book of Promises and map or plot of Salt Lake City.

Was it a part of lot 2 on the block north of 69, which you say was put down to Stephen Longstroth, that he transferred to D'r Richards by the transfer before mentioned as being made at the time Doctor Richards transferred the west part of lot 6 to him (Longstroth)?

(Objected.)

All of lot 2 had been put down to Stephen Longstroth, but he only transferred the north part of that [2] lot by the said transfer.

(The above question and answer objected to on the ground of irrelevancy.)

Did D'r Richards receive that parcel of land from Longstroth for the portion of lot to be conveyed to him (Longstroth)?

(Objected to by the counsel for Cain on the ground of irrelevancy.)

It was only give and take; it was just a swap.

You have stated that D'r Richards gave that lot 6 away without any consideration except good will, just as he did other lots. How was it, then, that he received this parcel of land from Longstroth for the portion of lot 6 transferred to him?

It was merely good will. He had given lot 2 previously to Longstroth, before this transfer was made. D'r Richards had some of his family buried on lot 2, and changed with his father-in-law so as to get that piece himself where the graves were. There was a transfer law made and passed in 1852, which required transfer being made in a certain form.

79 (The above question and answer objected to by Cain's counsel as being irrelevant.)

Did not D'r Richards at the time he made that transfer to Longstroth deal with lot 6 as his own individual property, and altogether different

from the usual manner of distributing lots to settlers, which you have explained in the previous part of your testimony?

That was simply on account of the passage of that transfer law, otherwise he would have ordered me as he did before, and I should have obeyed him as I did before. In this case there was a transfer and a swap, and in these particulars it differs from the ordinary distribution of lots.

(Counsel for Caine objected to the above questions and answers on the ground of irrelevancy.)

How do you know there were graves on the parcel of land he got from Longstroth?

I saw bodies buried there, wives and daughters of the doctor's family. The doctor himself is buried there.

Of the lots distributed by D'r Richards, was he charged for surveying all not paid for by the parties receiving them?

No, sir.

Was he held liable for the surveying of any lots except those he kept for himself?

He was not liable for any except those he lived on.

What right had you to charge him for the surveying of lot 6 if he did not own it?

M'r Sherwood was owning the Deseret News, Willard Richards being editor and publisher, and Doctor Richards owed him for the surveying of those two lots on the block he lived on, and we squared accounts, including the charges for surveying lot 6.

You say it was in 1848 or 1849 that D'r Richards ordered you to put down the east half of lot 6 to Joseph Cain. What arrangements was made with Blazzard, who had previously been put down to the whole of that lot?

No arrangement was necessary. D'r Richards just ordered me to put down the east half to Joseph Cain.

After a lot had been once given out, did those who had the giving of them out ever reassign such a lot to some other person without the consent of the persons to whom it was first given?

This was done frequently, and I am positive the lot south of me was redistributed after having been once given out; either Dan Jones or Robert L. Campbell first received it, and afterwards it was divided up between them.

80 Did Joseph Cain live on that lot continually after he moved there until his death?

Yes; I think he did.

You remember Le Grand Young asking you, at your residence a short time ago, at a time when he called upon you in company with D'r H. J. Richards, what you knew about D'r Richards owning lot 6, block 69, plot A?

I remember they called on me, but I don't remember what question he asked me nor what answer I gave, but it was something about this property.

Did Le Grand Young, upon the occasion, ask you the question whether or not you had ever heard Joseph Cain say anything about his occupying or owning that lot or a portion of it, or a question of that import?

He might have asked me such a question, but I do not remember it.

Did he ask you at that time if you had ever heard D'r Willard Richards say anything at all about Joseph Cain's occupying or owning that lot or a portion of it, or if you heard him say anything about Joseph

Cain in connection with that lot, and did you reply to the question that you had not heard him say anything?

He certainly asked no questions in those words, and I could not have made such an answer as that.

Did he at that time ask you a question to the effect and import of the last preceding questions?

Not to my knowledge.

If he did ask you such a question are you positive that you did not answer that you had never heard the doctor say anything about it?

I do know positively that D'r Richards told me to put the east half of that lot down to Joseph Cain, and I did not make such an answer when I put the lot down to Joseph Cain. The Doctor was present and saw me do it.

Do you remember of being at the residence of D'r H. J. Richards somewhere near the first day of July, and there having conversation with him about lot 6 above mentioned?

I remember being at his residence; we had some talk about that lot.

Did he then and there ask you if you knew whether his father, D'r Willard Richards, had ever given or sold that lot, 6, or any portion of it, to Joseph Cain; and did you answer that you had no knowledge of his doing such a thing, and that you only knew that M'r Cain occupied a portion of such lot, and that you knew not how he got it. You only knew it was rumored that Willard Richards gave it to him?

He might have asked me such a question, but if he did I don't remember. I have no recollection of giving him an answer.

81 Will you not answer the question positively as to the answer you gave him?

I cannot answer positively.

Then you may have told him that you knew nothing about whether his father gave Joseph Cain the half lot, or any portion of it, or not?

As to his giving Joseph Cain the full lot I would have said no; as to a portion of the lot I should have said yes.

When did Blazzard get the lot, or a portion of it?

I think he got a portion of that he now has from Dr. Richards, and the balance he got from a chair-turner; I don't recollect his name.

Do you know positively that Blazzard got a portion of the land he now owns on the lot, in the first distribution of lots, from Dr. Richards?

I am satisfied in my own mind that Blazzard had a piece from the west half of that lot, east of and adjoining Longstroth's piece, from Dr. Richards in the first distribution.

Do you remember speaking to me on yesterday, in the room below, just before we proceeded to business after dinner, about your wishing to go to Coalville, but was detained by this case?

I remember that conversation.

Do you remember saying to me at that time if you could not get employment from one party you must from the other?

I have said if I cannot have employment at one thing I must at another.

Won't you say yes or no to my suggestion?

I say yes.

What do you mean by using these words?

Since I came to the city, on the 3d of July, and since this case has been in operation, there has been an election in Summit County, and another person has been elected in my place as recorder through being

absent from there, and therefore if I am not employed by one party I must get employment from some one else.

Has any party given you any money in this case?

In the presence of Le Grand Young, he asked me why I did not go to Coalville, as I wanted. I told him I hadn't money to pay my railway-fare. I said "I even haven't money enough to get shaved." When I got outside the fence M'r Crismon says, "Haven't got money enough to get shaved?" He put his hand in his vest, drew out a bill without looking at it, and says, "Here, go and get cleaned up, and look respectable, as a clerk;" and I thanked him and went off cheerful. I think it was a five-dollar bill.

Re-examined direct:

Has not R. N. Baskin, one of the attorneys in this case, employed you to copy my notes?

Yes, sir.

82 Have you been employed in any other capacity in this case?

I have not.

What employment did you mean in the conversation with M'r Williams?

Any kind of employment as a clerk, or writing for any one who would pay me.

What has been your principal occupation in life?

I have been 43 years a clerk.

Did or did you not tell Le Grand Young or Doctor Richards, or both of them, you knew nothing about D'r Willard Richards having given the east half of lot 6 to Joseph Caine?

I could not have said any such thing.

Why could you not?

Because I knew the doctor had told me to put down his name (Joseph Caine) to the east half. I remember it as well as I see you gentlemen sitting here.

Before this east half of lot 6 was set down to M'r Cain, had M'r Blazzard ever occupied or improved said lot, or any part of it?

I cannot say. I am pretty sure he had not.

When Joseph Cain's name was set down on that half lot, was M'r Blazzard assigned any other lot; and, if so, where?

He had a lot down in the seventh ward, but how he got it I don't recollect.

THOMAS BULLOCK.

Subscribed and sworn to before me, this 29th day of August, A. D. 1872.

D. BOCKHOLT,
Probate Clerk.

GEORGE WHITAKER, being first duly sworn according to law, on oath says:

Were you acquainted with Joseph Cain in his life-time?

Yes, sir.

Where did you know him?

I got acquainted with him in 1847. I knew him back at the bluffs. In the winter of 1847 and 1848 he kept a herd in Cottonwood, in this Territory. In the spring of 1848 he moved up to the old fort, Salt Lake City. In the fall of 1848, D'r Richards arrived in this Territory. I believe M'r Cain went into the employ of Doctor Richards in the fall of 1848 or the spring of 1849. In the fall of 1849 he went to California, partly on

his business and partly on M'r Richards', as I understood. In the fall of 1850 he returned from California to his residence in the seventh ward. I don't know how long he stayed in the seventh ward until he moved into a little house on the east end of the lot that the Eagle Emporium is now on.

How long did he reside there?

To my recollection he must have staid there a year and a half.

83 In the mean time, while he was living there, he commenced building his own house.

When did he move into his new house?

He must have moved in the fall of 1852 or spring of 1853.

How long did he live in his new house?

He lived there till the date of his death, which occurred, I think, in 1857.

Do you remember what year he first moved into that half lot?

I think it must have been late in 1850 or early in 1851.

Do you know anything about how he came to move on to that lot?

Not to my own knowledge, only through M'r Cain. He told me that D'r Richards wanted him to come and live near him, and if he would come he would give him half a lot, or part of a lot, I don't know exactly which. M'r Cain was rather reluctant, as far as I can remember, about moving off his lot in the seventh ward. He had a good garden there, on which he could raise something to eat. He finally accepted the offer and moved on to the half lot. I can't remember any particular conversation. We have talked about it, but I can't repeat what was said.

Do you know much of that Emporium lot M'r Caine occupied?

He told me himself it was up to the middle fence on the west. He included the whole half lot, all east of the west fence. He took me round and showed me the half lot.

(Council for Richards objected to the last preceding answer on the ground of being hearsay.)

Do you know any reason why he did not have a whole lot there?

I believe before he moved there that he expected a whole lot, and D'r Richards had given a good many lots out at an earlier time. (What I am going to say now is what M'r Caine told me.) That he (the D'r) had reserved the west half of that lot. I suppose it was for his friends.

At the time M'r Cain showed you the half lot and pointed it out to you who was in possession of it?

No one but himself, I believe. I think the Hinmons had moved out.

From the time Joseph Cain first moved on that half lot, up to the date of his death, did or did he not occupy and exercise ownership over it?

He did.

During that time did you know any other person to exercise ownership over it?

No, sir.

How far back from East Temple street was that west fence you spoke of?

I never measured it, but I should judge it was about ten rods.

Was there any fence on the north side of that half lot?

84 There was a fence, but it was not of much account, it being a barren lot. It was not kept up very good.

Was there any fence on the east side?

Yes; there was a pole fence.

Was there any fence on the south side?

Yes; there was a fence on the south side, what they called Pixton's fence, I believe.

What was the size of M'r Cain's new house?

It must be about from 36 to 40 feet long, 2 stories high. The main house had two front rooms, a large hall, and two rooms up stairs. There was an addition made afterwards, with a kitchen below and two or three rooms above.

About how much must that house have cost when it was all complete?

In those days it must have cost from three to five thousand dollars.

Do you know the value of that half lot, with all the improvements, at the date M'r Cain first moved on it, and before the new house was erected?

There was nothing on it at that time but the little house in which M'r Cain moved and an old cow-shed. I don't know that at that time we could value the land worth anything. All told, it was a shocking place, and of no great value.

Cross-examined:

When was it M'r Cain showed you the lot and told you how much he owned?

While he lived in the little house on the lot and at different other times he showed me the lot.

When he first showed you was the west fence there?

I never recollect seeing the half lot without the west fence.

How do you know he (Joseph Cain) possessed and exercised ownership over that half lot?

He told me he did, and I never heard his right disputed. It was always called Cain's corner.

Did no one else ever occupy any portion of that half lot after M'r Cain moved there?

Yes; there was a widow woman built a little place there. There was a man by the name of Topham built a wooden shanty or butcher-shop there. I believe in the little house out of which M'r Cain moved there was a whip-maker. M'r Cain used to rent that little house.

Were those parties tenants of M'r Cain's or did they live there by permission?

They were tenants of M'r Cain's and lived there by his permis-
85 sion, and no one else. So far as my recollection goes, no one had jurisdiction of the place except Mr. Cain.

How do you know those facts?

I can't hardly tell how I know them, any more than Mr. Cain told me. That's how my knowledge came. I was with him a good deal about his premises, and knew considerable of his business. I was around there fixing his little garden, about one by two and a-half rods. The impression was that Mr. Cain had the control of all the property around there, from the south fence to the north, and from the east fence to the middle fence. He had his wood-pile there; had a cow-house, and lumber and other kind of material on the north side of his lot, and seemed to have control of the whole half lot.

Do you know anything about when Mr. Cain got that lot, how much he owned, and his letting portions of it to other parties, apart from what he told you?

I don't know any more than what he told me.

Where did you live during the time Mr. Cain lived on that half lot?
I lived in the seventh ward, Salt Lake City, where I live now.

GEORGE WHITAKER.

Subscribed in my presence, and sworn to before me, this 29th day of August, 1872.

D. BOCKHOLT, *Probate Clerk.*

Mrs. SARAH OGDEN, being first duly sworn according to law, on oath says:

Did you know Mr. Joseph Cain in his lifetime?
I have seen him, but was not much acquainted with him.
When did you first see him?
Some time in October, 1854, as near as I can tell.
Where was he residing at that time?
On the lot where the Emporium building now stands.
Did you ever reside on that lot, and if so, how long?
Yes, sir; I think I lived there about three years.
State the circumstances attending your possession there, and how you obtained it.
I had been in the habit of being in business in the old country, and I wanted to enter into business again in Salt Lake City, and I wanted a public place. I went to President Young and asked him if he would let me have a building place on that lot. He said he hardly thought he could spare it. I told him one rod in front was all I wanted, running back to Price's fence, supposed to be ten rods. He told me to go and tell Mr. Cain to measure me off a piece, and Mr. Cain measured me off one rod of ground.
When you applied to President Young did you know who owned that lot?
86 I did not know; I supposed he owned it. I went to him supposing he had the power, if he desired to do so, to grant it to me and put me in possession.
Why did you suppose he had such power?
I had confidence in him that he had possession of such power at that time.
Had you not a like confidence in relation to any other lots in Salt Lake City?
No, sir. I had not thought or studied on the subject of any other lot.
While you lived there did you own or claim to own the land on which your building stood?
No, sir; never.
Will you state the exact privilege granted?
I only got the privilege of building a house there for business.
At the time you applied for that privilege, who occupied that lot?
Mr. Joseph Cain and his family, and I think a whip-maker by the name of Shearer.
What, if any, conversation occurred between yourself and Joseph Cain at the time you made application to him?
I sent my boy to him. I don't think that I conversed with him myself.
Have you seen President Young since you came to this city?
No, sir.

Cross-examined:

Where was your house located from Mr. Cain's?

On the north side, with room for a wagon road between.

Was there any house north of yours on that lot?

A whip shop.

To whom did you pay rent?

I never paid any and had no written lease of the ground.

Did you ever hear whether or not Mr. Cain owned the ground you occupied?

I did not.

Did you ever hear Mr. Cain say anything about the land he owned?

No, sir.

Did you ever hear during the time you lived there anything about that land belonging to any particular person?

No, sir.

What did you do with your building when you left.

Part of it I sold, and part of it I moved away.

To whom did you sell the part of the building?

To Brigham H. Young.

87 RE-EXAMINED DIRECT.

Did you sell Brigham H. Young any portion of the land, or only the house?

I sold him no land, only the material in the house.

Did you ever pay any taxes on the property?

On the house I did.

SARAH OGDEN.

Subscribed and sworn to before me this 29th day of August, A. D. 1872.

D. BOCKHOLT,
Probate Clerk.

AUGUST 30, 1872—10 a. m.

Parties met pursuant to adjournment.

JOHN M. BOLLWINKLE, being first duly sworn according to law, on oath says:

Did you know Dr. Willam Richards in his lifetime?

Yes, sir.

Where did he live?

He lived on the block north of the Emporium lot, behind the Constitution building, Salt Lake City.

Do you know the number of the lot, block, and plot on which the Emporium building is situated, in said Salt Lake City?

It is lot 6, block 69, plot A.

Were you ever in the employ of Dr. Richards, and if so what was your occupation?

I was in the employ of Dr. Richards, through Joseph Caine, now deceased. I was clerking in the post-office and the Deseret News office.

At the time you was so employed who was postmaster, and who was editor and proprietor of the Deseret News?

Dr. William Richards was both.

How long was you employed in the capacity of a clerk?

I clerked in the Deseret News office from 1853 till some time in 1860. I was in the post-office, under Dr. Richards, from 1853 till the time of

his death. The News office and post-office were in the same building, and I acted as clerk in both at the same time. The first year I was there probably not over two-thirds of the time.

Were you acquainted with Joseph Cain previous to going into the post-office, and, if so, how long before?

It was about six weeks.

Where did he live when you first knew him?

He lived on the Emporium lot in a two-story house.

Do you know who owned that house at that time, and, if so, who?

Joseph Cain, deceased.

While you were clerking, as before stated, where did you live?

I lived with Joseph Cain.

88 Did you board or sleep at his house?

Yes, sir, I did, until within six weeks of his death.

Do you know whether Joseph Cain owned any portion of the Emporium lot?

He owned the east half of that lot.

Was he ever in possession of any portion of that lot? And if so, state how much.

He was in possession of the east half of that lot.

How long did he possess it?

He possessed it from the first time I went to live with him until the day of his death.

Describe what fences, if any, were on that lot during the time he occupied it.

There was a fence on the east side of the lot, which commenced near the northeast corner of the house, running north to the northeast corner of the lot. It was a pole fence of green maple, and they swagged in the middle. There was a fence commencing on the northeast corner, running ten rods within a few inches. There was a fence from that point and run about ten rods south, joining on the Pixton lot. This fence was constructed of part pole and part boards. I put portions of it up, and repaired and ordered it repaired, also the fences around there several tim's. There was a fence running from the point that joined Pixton's fence east, towards East Temple street. It did not run quite to the southeast corner of the lot by about one rod or twenty feet. When I first went to live there it was built of very small poles, and I replaced them with heavy pine poles. The fence all around the lot was very poor, except the south and west. There were no boards on the south fence.

At whose instance and for whom did you build and repair the fence on that half lot?

Joseph Cain.

What use, if any, during the time Joseph Cain lived there, was made of that part of the lot north of Joseph Cain's residence?

He (Joseph Cain) generally used it for fire-wood, timber, lumber, and old wagons. Sometimes he had machinery on it.

How do you know Joseph Cain was the owner of that half lot?

Because he bought and paid for it.

How do you know that fact?

Through conversation with Dr. Richards and Joseph Cain.

Repeat, if you can, that conversation.

In the fall of 1853 I left the News office to go to supper, and on my way down I called at Dr. Richards' office, at his residence. I left with him.

that evening, some manuscript and copy to look over. Joseph Cain

89 was there when I got there; they were talking together about the

Emporium lot. Mr. Cain said he wanted to get the north end measured, to get the exact corner of the ten rods from the northeast corner. The doctor said he would go down with him next day and they would measure and find it out. Mr. Cain then spoke about the deed. The doctor said he had to make out some more deeds and he would have his made out at the same time. The doctor then asked Mr. Cain if he had given himself credit for the gold dust he had let him have on account of the lot. Mr. Cain said that he had. That was all that they said at that time in relation to the lot.

Do you know anything about the gold transactions referred to?

Yes, sir; it was some gold dust that M'r Cain let the doctor have on account of that half lot, and was credited on the Deseret News books.

How do you know that it was paid on account of the lot?

Because D'r Richards and Joseph Cain both told me so.

How do you know it was credited on the Deseret News books?

Because I saw it there.

When did you see it?

I saw it in 1854, after the doctor's death. It was not the regular book that I saw it in; all the accounts were not in that book.

State, if you can, what were the value of the accounts that were kept in the book in which entry was made.

A few of these accounts of the hands of the office was in these and D'r Richards' accounts, and M'r Cain's account with Doctor Richards was in this. There was not a great deal of writing done in that book. They commenced a new set of books. I think the entry was on page 245.

What did that entry contain?

By so many ounces of gold dust to W. R. That was the way the name of D'r Richards was put down on the books in furnishing or receiving anything from any person.

(Objected by counsel for Richards to the statement, as to the entry on the book not being the best testimony.)

Do you remember the date of that entry?

I don't remember the date, but think it is 1851.

Do you know where that book is now?

I do not.

Have you ever made any search for it, and, if so, when and where?

Yes; I have made a search at the request of the heirs of Joseph Caine. M'r Charles Crismon accompanied me to the Deseret News office, and we asked George Q. and Angus M. Cannon for the books. They handed me all the books they had out of a safe or box. The oldest they could find was marked 1855, Ide.

90 Among these books did you see the one in which that entry was made?

I did not.

When you last saw that book, where was it?

It was in the Deseret News office, on a shelf. There were several other books with it. The others were all subscription-books to the Deseret News.

When did you last see it?

In the winter of 1855 or 1856; I think most likely in 1855.

How did you come to notice that entry in that book?

One afternoon, when M'r Cain was going to his dinner, he handed me that book and asked me if I could find certain charges. He gave me four charges to find, and I could only find three of them. It was then I saw M'r Cain's account. When M'r Cain came from dinner, I asked

him if that was the credit to him on account of the lot; he said it was. (Objected to what M'r Cain said.)

Did you ever hear any other conversation between Joseph Cain and D'r Willard Richards in relation to the east half of the Emporium lot? And if so, state that conversation.

The day after the conversation above referred to, I was going down to M'r Cain's house, about noon, from the Deseret News office; D'r Richards and M'r Cain were at the northwest corner of the Emporium half lot; they were hunting for the peg that had been put there before. D'r Richards was scraping the gravel away from the place where he thought the peg was, and finally found it; it was a few inches over the west corner post. The doctor said that was the right mark. M'r Cain remarked to the doctor that he wanted to get the right corner so as to put up a new board fence on the east and north lines of the Emporium lot. The doctor said yes, it would make the lot look a great deal better. The doctor made some few remarks about the other side; he said that he had let John Eddins have a building spot on the other side of your line. That was about all that was said at that time, and we walked up to the house. The day after that, M'r Cain and another gentleman, in the afternoon, or somewhere about noon, they were measuring the north line with a strip sawed off of a piece of board; it was a rod stick of sixteen and a half feet long. When they got to the northwest corner this pole or stick come to the peg within about an inch or so. The post on the northwest corner was about six inches east of the peg.

Was D'r Richards there at the time?

He was in M'r Cain's house at the time. He came out as I went in the house, and went out to M'r Cain. I saw them from the kitchen door, standing at the corner, but couldn't hear what they said.

91 What year was this?

In the fall of 1853.

Did you ever hear another conversation between D'r Richards and M'r Cain on the subject of that half lot? If so, repeat it.

Yes, sir; it was about 4 or 5 o'clock that M'r Cain and D'r Richards were sitting in M'r Cain's parlor, and they were having some conversation about having a settlement of the gold-dust transaction. Mr. Cain asked the doctor how they were going to arrange about the amount to be allowed on that lot (half lot). The doctor said for him (M'r Cain) to make out an account of all the gold dust that had been passed into the mint, that they could see how they stood, and then he said they could fix it. I could tell by their talk that they had some other transactions. I left then; that was all the conversation I heard. M'r Cain afterwards made out an abstract of that gold-dust transaction, and started with it to the doctor and did not bring it back with him. He did not have it in his pocket.

How do you know he did not have it in his pocket?

Because when he started out he changed coats, and there were never any papers in that coat; it was not his business coat; I mean the coat he put on. He had a pocket on the outside of his left breast, and the pocket was not deep enough to allow the paper to go in there. If it had been in there it would have been sticking out, and I should have seen it when he returned.

During the time Mr. Cain lived on that half lot, how much, if any, did he occupy?

He occupied all of it.

How do you know that?

Because he had his timber and wagons and lumber, and everything else he wanted, on it.

How much lumber did you ever see on it at any one time?

Between five and eight thousand feet.

Where on the lot was the lumber situated, on the half-lot, and how was it piled up?

It was close up to the north fence, and about two or two and a half rods east of the west fence.

How long did the pile of lumber remain there?

Some of it remained there over a year.

When was it first placed there?

It was placed there in 1855.

Who placed it there?

I placed it there myself.

Where did you get it?

I got it from old man Baldwin's lot, nineteenth ward.

To whom did it belong?

92 To Joseph Cain. He bought it.

Of whom did he buy?

He bought it by auction from the quartermaster of Col. Steptoe's command, the lumber being the stables and granaries which were built on Mr. Baldwin's lot, which was used during the winter of 1854–5 for stabling horses. Leonard W. Hardy and Hon. Elias Smith were in partnership with M'r Cain when he bought it. There was some old wagons and other traps bought at the same time, and they divided the whole equally, and M'r Cain's share was taken to his half-lot.

How large was the house in which M'r Cain lived on that lot?

The length of it, from north to south, was between 36 and 40 feet. It was a two-story house, and had four main rooms in front, two up and two down stairs, a hall up stairs and one down.

Did any person live in that house with M'r Cain?

Yes; his family lived with him.

Of how many members did his family consist at the date of his death?

Himself and wife, a daughter and son.

Do you know whether his wife, daughter, and son are yet living?

I know that they are living.

Do you know how old his daughter was at the date of his death?

She was born in April, 1848. M'r Cain died on the 23d day of April, 1857.

How old was his son at that time?

His son was born on the 14th of May, 1850.

Where did M'r Cain die?

He died upstairs in his residence on that lot.

Do you know, at the date of his death, whether he owned any other residence or not?

He owned a house and lot in the fourth ward.

Are you certain of that?

I am not certain of it; he may have sold it before he died.

Where was his homestead?

His homestead was on the Emporium lot.

Were there any other buildings on that half-lot besides his residence while M'r Cain resided there?

There was a small adobe house a little north of M'r Cain's new house; then there was a butcher-shop on the south side of his house, built of lumber and slab.

Who occupied the butcher-shop?

M'r Topham.

Do you know who owned the ground on which the butcher-shop stood?

It belonged to Joseph Cain.

93 Do you know how M'r Topham came to occupy it? And, if so state the fact.

He hired it of M'r Cain.

How do you know?

Because M'r Cain and myself collected the rent for the use of his family in meat. Sometimes M'r's Cain would go and get meat for the family, and sometimes I would go myself. When M'r Cain was away at the end of the month, M'r Cain would make settlement with M'r Topham, and if M'r Cain had overdrawn a month's rent, he would sometimes give him an order to pay him the difference, or let it go on the next month's rent.

Who occupied the adobe house north while M'r Cain lived?

M'r's Braddock and M'r's Franklin lived in there most of 1853 and only a short time in 1854. Then M'r Cain rented it to Daniel Shears, M'r Snelgrove, and another boot-maker, but I don't recollect his name. There was in there part of the time a whip-maker with M'r Shears by the name of Hutchinson. M'r Shears and Snelgrove were not in partnership in business, but somehow in the rent.

How do you know M'r Cain rented it to those parties?

I part of the time collected the rent myself.

When you collected the rent what would you do with it?

Sometimes I would get shoes for some one of M'r Cain's house, and sometimes for men working for M'r Cain; sometimes I would get whips. In one instance I bought a feather bed of M'r Shears. M'r Cain told me if I couldn't make payment for it I might have part of it on account of the rent, and he would he give Shears credit and charge me. I done so, and I think it was five dollars I turned that way.

How was it done?

M'r Shears charged M'r Cain with the five dollars. Then M'r Cain would give Shears credit for it (the rent), and then M'r Cain charged me.

What year was this you bought the bed?

It was late in 1855 or early in 1856.

While M'r Cain lived on that property, do you know who paid the taxes on it?

He paid the taxes out of his own means in most cases. It was paid in county and Territorial scrip by the Deseret News office, and then it was charged to M'r Cain on the Deseret News books.

Were there any outbuildings on that half lot?

There was a stable, put up of red pine logs, towards the southwest corner of that half lot. It was put up by Asa Brown and myself in the fall of 1853 for Joseph Cain.

At whose instance did you build a portion of the southern fence of the half lot?

94 At the instance of Joseph Cain.

Adjourned till Monday next, 2d of September, 1872, at 10 a. m.

SEPTEMBER 2, 1872

Parties present.

Were you in attendance on M'r Cain in his last sickness?

I used to call on him from one to three times a day.

Did you ever have any conversation with him in his last sickness in relation to the east half of the Emporium lot? And, if so, state what that conversation was?

I did have a conversation with him. I think it was the third night before he died. At the time of this conversation I was in his room. He said, "John, I think I am going to leave you now." This was the first time he acknowledged he was afraid of death. He took me by the right hand as I was sitting on his bed. He said "You understand my business. I want you to see that my children are righted with the property that I now own." He said "This is my homestead;" and in relation to debts he said this: "You know my accounts, and should any come in that are wrong, you will know it, for you know my business as well as I do myself. I do not want my wife and children cheated in any way." He said "You know what property I own."

(Last question and answer objected to by counsel for Richards' heirs on account of being hearsay.)

To what property did he refer when he spoke of his homestead?

To the lot he occupied.

What lot did he occupy at that time?

Ten rods square on the east side of the Emporium lot.

Cross-examined:

When did you first come to Utah Territory?

I first arrived in Salt Lake City on the 7th day of October, 1852.

How old were you then?

I was born May 14, 1837.

Will you state particularly the duties or work you performed while in the post-office and Deseret News office?

Everything that I was told to, and everything that was required in such offices. In the Deseret News I used to prepare the newspapers for the mail, direct them, and send them off. I helped to keep the subscription books; helped to keep the day books, and made out accounts in general. Received subscriptions and signed my own name to the receipts. I was not engaged in the capacity as a compositor, but as a clerk. I would work the press and rollers sometimes when they were short of hands.

Was Joseph Cain employed in the Deseret News from the time you commenced there until his death?

95 He was employed there until within about a year of his death, when he quit on account of sickness.

What was the general nature of his business while there?

He in general made out all the accounts and helped to keep the books, and had charge of the business generally with Elias Smith.

Was M'r Cain the chief or principal bookkeeper for the Deseret News?

He had the principal charge, and I think D'r Willard Richards principally conferred with him in office affairs. I was under M'r Cain and Elias Smith.

At the time you went to live with M'r Cain, how many rooms were in his residence altogether?

There were six rooms, two halls, and one bake-oven. One of the six rooms was a bake-house.

Are you positive the west fence you have described was just 10 rods west from the east line of that lot?

I am positive within a foot or two, and at the northwest corner it was within a few inches of being ten rods from the northeast corner.

Was that west fence standing when you first went to Cain's, in 1853?
Most of it was. It was a little dilapidated. I fixed it up.
Had it ever extended entirely across the lot before you repaired it?
It did, including the corral in the southwest corner.
How large was the corral you mentioned?
It was not quite two rods each way.
Was it on the extreme southwest corner of M'r Cain's ground?
It was.
What kind of a fence was around the corral?
Quakenasp poles.
Was it there at the time you went to live with M'r Cain?
It was, but it was not in good order.
Did it remain there up to the time you left M'r Cain's?
It did not.
When was it taken away, and by whom?

I pulled it down myself at the time M'r Brown and myself put up the stable, which was in the fall 1853. We reduced the corral at that time to the dimensions above of a rod square. It was on the south side of the stable, and was in the extreme southwest corner and made part of the fence. The stable was 18 feet long, north and south, and about 12 or 14 wide.

At what time did John Eddins first live on the ground west of M'r Cain's?

He lived there as soon as he got married, which was, I think, in 1853.

96 Did Eddins have a house there when you went to live with M'r Cain; and if not, when did he build, and where?

It was not there when I went to live with M'r Cain. The cellar was dug shortly after I went there, in front of where Eddins built his house. He built, I think, in 1853, and near the northwest corner of Joseph Cain's property, and about thirty feet back from the fence, on First South street, and about eighteen or twenty feet from the west fence of M'r Cain.

Are you positive now that at the time M'r Eddins built his house the west fence you have mentioned was east of that house, and is it not possible that you are mistaken as to the location, and that, in fact, it might have been west of M'r Eddins' house?

There was a fence west of Mr Eddins' house, and there was one east, which was M'r Cain's fence.

Do you remember what the fence west of M'r Eddins' house was built of, and how far it was from his house?

I forgot whether it was a board or pole fence, I am not certain which, but M'r Blazzard said it was his fence. The fence was about ten feet west of Eddins' house.

Then you are positive there was a fence east of M'r Eddins' house, running north and south through the lot, on M'r Cain's west line, at the time M'r Eddins built his house?

I am positive it was there in 1857; I don't remember whether it was there at the time M'r Eddins built his house; I mean the fence west of Eddins. I am positive there was a fence east of M'r Eddins' house when it was built.

Do you know how much land M'r Eddins had on that lot?
I know he had ten rods back, but I don't know what frontage he had.
How far was his east line from the east line of the Emporium lot?

It came up to that peg I spoke of before in the examination. It was ten rods from the east line, so D'r Richards said that day.

Did you not know that M'r Eddins' east line was fourteen feet or thereabouts east of the line, ten rods west of the east line of the Emporium lot?

I did not.

What portion of the west fence did you put up, and at what time?

In the fall of 1853, when Brown and I erected the stable, I put up a portion of the south end.

How large a portion did you put up, and what of?

About two rods or two and a half rods of boards and poles.

How far was the stable that you and Brown put up from the south line of the lot?

It was in the neighborhood of twenty feet.

97 Did Eddins have any stable on the south end of his ground, near that of M'r Cain?

He had a shed or some kind of a stable there.

What was it built of?

I don't remember what.

Will you state particularly where it stood, especially with reference to the south line?

It was on the south line of the lot, as near as I can remember. I rather think it joined on to Pixton's fence.

Are you positive there was not room south of that stable, between it and Pixton's fence, for wagons to pass?

There was not. The wagon-road then was south of Pixton's line and on his lot.

Was there not an alley or wagon way running from East Temple street west, along the south edge of and on the Emporium lot, any of the time you was at M'r Cain's?

There was not.

During the time you lived at M'r Cain's, was the fence on the east half of the Emporium lot kept up so as to prevent teams from passing over it at pleasure?

The fence was always kept up, but sometimes one end of them would be left down.

How did M'r Eddins get into his stable from the street?

From First South street.

On which side of M'r Cain's west fence?

On the west side.

Will you state what time in the fall of 1853, as near as you can, that you heard the conversation you have stated between M'r Cain and D'r Richards, at the doctor's office?

I think it was in October or November.

Did M'r Cain ever get the deed spoken of on that occasion?

I do not know.

Did you ever hear either D'r Richards or Joseph Cain, after that time, speak of the deed to the east half of the Emporium lot.

I never heard the doctor speak of it afterwards. I heard M'r Cain speak of deeds, but don't know whether it was that deed or not.

When and where was it D'r Richards told you the gold-dust you have mentioned was paid him by M'r Cain on account of that lot?

In his office, at the time M'r Cain and him were having that conversation.

Did you engage in that conversation?

Not directly.

How long did you remain there at that time?

About fifteen or twenty minutes.

98 How do you know it was in 1854 you saw the entry of the gold dust in the account-book at the Deseret News office?

I know it was the second year I worked there, and I had more to do with the books the second year than I had the first.

How do you know it was the second year you worked there?

Because I was right there myself.

Was that your only reason for knowing it was the second year?

I know it was the same year D'r Richards died, for another reason.

How do you know it was the same year he died?

Because I know I had more to do with the books after D'r Richards died than I had years before, and I was there myself and know it.

Will you state particularly the size and appearance of the account-book in which the entry of the gold dust was made?

It was the size of foolscap paper, about a two and a half or three quire book, and I think it was bound in binder's cloth.

At the time you first saw the entry in that book, did it appear to have been much used in handling?

The outside showed rough usage, but the inside was well preserved.

Do you mean by accounts of the printing-office hands their accounts for work done in the Deseret News office?

Yes, for work done there and other accounts besides. For instance, D'r Richards would furnish them means outside of his own private means, that did not belong to the News office.

What do you mean by saying that book contained D'r Richards' account and M'r Cain's account with D'r Richards?

I mean just what I said. D'r Richards was building a road to his mill in Cottonwood, near Farmington. He employed men who subscribed for the Deseret News, and he would charge himself, through his clerks, on this book, and credit the subscribers on the subscription book. I think M'r Cain's account with the doctor was mostly a private account, on that book.

Was it the regular book of accounts with the employees of the Deseret News office generally?

It was not the general book for such accounts with the employees.

Are you sure the entry you have mentioned was on page 45, and, if not, what makes you think it was?

I am not sure, but it is my impression it was; it is more from memory than anything else.

Have you, or not, recollections as to the amount of the gold dust?

I do not remember how many ounces, I am sure.

Do you remember the date of the entry?

I do not, but to the best of my recollection it was in 1851 or 1852.

Who had control of that book at the time you saw it?

It was in charge of Elias Smith and Joseph Cain.

99 Were there any other accounts in it than the one you have mentioned?

I don't remember, but do not think there was.

How long do you say it was after the first conversation between D'r Richards and Joseph Cain, which you have related, until you saw them measuring the north line of that half lot?

The next day. The doctor at the northwest corner of the half lot, and the day after that, they, Joseph Cain and another gentleman, measured it.

Were you in company with them when they measured it?

It was after they had measured two or three rods of it, and followed them up until they had got to the peg.

What was the object of that measurement?

To find the exact distance of the north line running east and west, so that M'r Cain could put his new fence, and to find the northwest corner.

Do you know the stick they measured with was just 16½ feet in length?

It may have been a quarter of an inch long or short; I did not measure it. It was taken off the flooring for the up-stairs rooms of M'r Cain's house, which were 17 feet long, and after this stick was taken back to the flooring lumber it was marked up to 16 feet. This stick was afterwards used to measure wood on wagons.

When was it you heard the conversation between D'r Richards and M'r Cain in M'r Cain's parlor, which you have alluded to?

I think it was in the early part of December, 1853.

How long after that was it until M'r Cain made out the statement of the gold account which D'r Richards requested?

I think it was from four to nine days.

You have stated that when M'r Cain started on with that statement of accounts, he changed coats, and that there were more papers in the coat he put on. How do you know that fact?

It was not the coat that he generally wore in the evening, and he never used that coat. He went out visiting in the evening. It was his Sunday coat, and heavier than the business coat he wore.

Were you in the habit of keeping yourself informed as to the contents of M'r Cain's pocket?

I was not; but then I knew what means he had, and what he could command.

How do you know that that statement was not in his pocket when he came back?

Because I did not see it there, and if it had been I would have seen it sticking out of his pocket from the way he folded it.

How long was the paper?

100 It was as long as the width of letter writing-paper.

How deep was M'r Cain's pocket?

I never measured it (not that pocket); but I know the pocket I had reference to was not over six or seven inches deep.

How do you know it was not over six or seven inches deep?

I should judge that, though I never measured it.

You say you had never measured any of his other pockets. You had not measured that pocket?

I never had.

What has your memory got to do with the depth of that pocket in M'r Cain's Sunday coat?

I had seen him put other papers in that pocket and they always stuck out.

Did you not say he never put any papers in that coat?

If he did he never put them there to keep them, like he did in his business coat.

What did he put them there for?

He put them there because he wanted to carry them, I suppose.

Then if he did carry papers in that coat, why did you say it never had any papers in it?

I mean he never left them there, but would transfer them to his business coat.

You stated M'r Cain bought some lumber from the quartermaster, in Steptoe's command; how do you know he did?

I never said so. I said he in connection with two others, Elias Smith and L. W. Hardy, bought some lumber; all three of these men told me so, and I hauled the lumber away myself.

Are any portion of the walls of M'r Cain's residence still standing?

I am confident that they are, the south and north walls, or a part of them are.

Of what building do they form a part?

It forms a part of the building formerly occupied by Ellis Brothers.

How do you know M'r Cain's daughter was born in 1848, and his son May 14th, 1850?

Because their parents told me so, a dozen times or more, while living in their family. I also know by a register he kept, which I think was in a Bible.

What time in 1854 was it that M'r's Braddock moved out of a little house north of M'r Cain's residence?

I think it was a short time after the doctor died.

Did she live there by M'r Cain's permission?

That was alw'ys my supposition. I was not there when she moved in.

Where were you when she moved into that house?

101 She was there when I came to live with Mr. Cain. I don't know where I was.

Did you know Mr. Cain was the administrator of Willard Richards?

I did not know. I heard it said he was.

Might not Mr. Cain have rented that little house to Shearer and Snelgrove as administrator of Dr. Richards, and not as his own property, and may he not have accounted to the estate of Dr. Richards for the rent?

He rented his own property on the Emporium half lot, and no one's else.

How do you know Mr. Cain paid the taxes on that half lot?

Because I have seen him do it. And when Silas Richards, the assessor and collector, came up to the post-office to assess Mr. Cain's property.

How often, and where did you see him pay the taxes?

As I have before stated in my examination-in-chief, it was paid once a year. I think I saw it paid every year while I lived at Mr. Cain's. Mr. Cain and Elias Smith would find out from the hands in the office the amount of their taxes, and then they would promise the scrip to pay all those taxes, drawing scrip from the Territory and county for printing, and sometimes it was paid in subscriptions. Mr. Cain's was done in the same way.

Then it was by this process you saw Mr. Cain pay his taxes, was it?

Yes, in general. I think one year I paid it myself, or part of it.

During the time you was living at Mr. Cain's did not you have a good deal of leisure which you occupied in listening to conversations and seeing other people transact business?

All the leisure I had was to work sometimes all night and every Sunday regularly, part of the day.

You have stated you collected on subscriptions and signed your name to receipts. Did you do this frequently, and to a considerable extent?

Yes, I done it considerably, especially the last year or two.

Where do you live?

My family live in Provo City.

What is your business?

Clerking in general, sometimes I run a team.

Have you any interest in the result of this contest?

I have not.

How many days were you present during the taking of testimony in this matter, before you were sworn?

I do not know, I never counted them, but I think you com-
102 menced taking testimony two weeks ago last Saturday, and I have been here most, but not all the time. I was sworn last Friday morning.

JOHN M. BOLLWINKLE.

Sworn to and subscribed before me this 4th day of September, A. D. 1872.

D. BOCKHOLT,
Probate Clerk,
Per E. W. EAST, *Dep.*

PETER VAN VALKENBURG, being duly sworn according to law, on oath says:

Were you acquainted with Joseph Cain in his lifetime?

I was.

Where did he live?

He lived on the east half of the lot where Jennings' Emporium now stands.

At what time did you first become acquainted with Mr. Cain?

In 1852, in the spring; I think in April.

Where did he live at that time?

He lived on that half lot in a small house north and west of the one he afterwards built.

How long did he live on that lot?

He lived there when I first knew him, in 1852, and until he died, I think in 1857.

Do you know who was the owner of that half lot while Mr. Cain lived on it?

I do.

How do you know that fact?

Early in April Joseph Cain called me into the tithing office and told me he wanted me to do a piece of joining for him, finish a house. We then came together from the tithing office down to his place on the east half of the Emporium lot. He asked me what I would do it for. He furnished me a piece of paper and I made out a bill amounting to between two and three hundred dollars. The house was 16x32, two stories high, two rooms fronting on East Temple street, and about sixteen feet back, and about twelve or fifteen, perhaps sixteen, feet from the south line of that half lot. The adobies were very meanly laid up when I took the job. I commenced work immediately and continued to work, off and on, for the balance of the year. We were frequently delayed for the want of lumber during the summer. Perhaps in June, of 1852, I came to the building to work one morning, and was cutting joists in the lot back of the house, midway between the lines north and south. I saw Joseph Cain, Dr. Richards, Whitaker, and another man (it is my impression now, although I am not certain, it was Mr. Longstroth). Mr. Whitaker and this other man had a tape line in their hands. The doctor and Joseph were standing in the middle of the lot, on the north line.

They (Whitaker and the other man) were measuring from Mr.
103 Bullock's corner east. They had apparently measured the other ground from Jennings' corner to the middle of the whole lot where

they had a stake stuck on the north line. When they had finished measuring the second time Joseph Cain left the others standing on the corner that they had established in the center of the lot, came near where I was, picked up a spade, and went back to them and commenced digging a hole for a post. He did not succeed, and called and beckoned to me. I went from were I was at work up to the corner where the balance were standing, and took the spade from Joseph Cain and dug the hole and put in the post at their direction. Dr. Richards took his cane, and pointing to a spot on the ground said, "right there we want a post."

Did you hear anything said then why they were measuring and planting posts, and, if so, what?

They were dividing the lot between Joseph Cain and D'r Richards and establishing a line. From what they both stated then and at other times, the object appeared to be to get a fence between them.

What was then done?

They all moved (these four) to the southeast corner of the half lot, thence commenced measuring west with the tape-line. After finding the middle of the lot, they drove a stake on the south line. From there they dispersed.

At the time, did you hear any further conversation between them?

Nothing, except there was an arrangement made between them to put up that fence.

Were there any other stakes driven at that time?

I think between the northwest of the half lot and Thomas Bullock's there were one or two stakes driven at the time. I sunk the post. There was a stake standing at the northwest corner of that half lot.

Do you know who drove that stake?

I do not. Joseph Cain had some small stakes and an axe in his hand, but I did not see him drive any stake.

State as near as you can what was the exact words which passed between Joseph Cain and D'r Richards when you set that post.

Doctor Richards said as I came up, after Joseph called me, "right there is where we want a stake," at the same time putting his cane down. After I dug the hole I started for a stake, and Joseph says, "get one that will do for a fence-post." I found a piece of broken scantling, and put it up, by their direction, in that hole. I afterwards put in three or four posts on the same line from north to south. I nailed on strips of flooring to close the fence across the middle of the lot north and south. Another man had built a fence part of the way across and filled up the gap. I learned then, or at some other time, that D'r Richards had originally entered the whole lot and let Joseph Cain have half of it.

104 How do you know that the post you set was in the center of the Emporium lot?

Only by the statement of the four parties I have mentioned. They all agreed that that was the middle of the lot.

What was the size of the stake you saw standing near the post you put in?

It might have been two inches square through. I don't think it was quite that large. It was about eight or nine inches out of the ground.

You stated that after you set the post you heard D'r Richards and Joseph Cain talk at other times in relation to that half lot. Will you state, if you know how, what that conversation was?

At the time of setting the post, I know it was distinctly understood that the Doctor thereby let Joseph have half of that lot. Subsequent, and after Joseph had moved into his new house, he complained of my

charging him too much on two mantel-pieces. D'r Richards was present, and tapped him on the shoulder and said, "Joseph, you ought to be contented; the work is well done, and you have got a good house." At another time, when Joseph had finished a front room to his bakery, the doctor came in and went all over the house, and remarked again that he had a good house, and he said he was glad of it.

At whose instance did you build the fence you have spoken of?

I built that fence about three weeks after setting the stake or post, at the instance of Joseph Cain. I got the impression at the time that Doctor Richards had built his portion of the fence, and that Joseph had to build the balance.

From the time you put up that post up to the death of Joseph Cain, state, if you know, who occupied the east half of the Emporium lot, and how.

I know Joseph's family lived on it all the time. I know of his renting part of the house and bakery to different parties up to the time of his death. After his death his widow rented it. North of the house it was vacant for a time, but subsequently there was a small house put up on it, and a lady living in it. I did not know by what authority she was there. The whole place on the north side of his house seemed to be in the possession of one man, and I remember of Joseph Cain's showing me where to pile a load of wood I sold to him. I piled it up northwest of the house some distance. There was lumber piled up, and when I hauled that wood I had to remove some of the lumber to get at it.

How long was this after you set the posts?

This was but a few days before his death. I think some of that wood remained there after his funeral; and after his death the lot remained the same in the occupation of M'r's Cain, and there was no material change of ownership that I saw until Jennings built a butcher-shop on the corner. I think the butcher-shop was built some time in 1858.

Cross-examined:

Was there any other house north of Mr. Cain's house except the little house occupied by a lady, which you have already mentioned?

I think there was; it was almost directly north, not quite out of the corner; but was removed in order to put up that building of Jennings.

What was that used for during Mr. Cain's lifetime?

I think it was used as a shoe-shop.

Do you know whether Mr. Cain owned or controlled those small houses?

I don't know anything at all about that.

Was there a fence on the north side of that half lot at the time you were working for Mr. Cain?

I think when I first went there there was a temporary fence made of poles, but in hauling materials for the building a portion of that fence got broke down. Some of the poles of the north fence were put in the west fence, so that by the fall of 1852 it could hardly be said that there was any fence on that side.

You say some poles of the north fence were taken and put in the west fence; how do you know that?

Simply being there and knowing anything about them loose was taken to make up this fence.

Did you take any poles of the north fence and put them on the west fence?

I did not build any pole fence. I only finished out that fence with boards.

Did you see any one else do that?

To the best of my recollection, I did.

You say that at the time you set up that post you knew it was distinctly understood that the doctor thereby let Joseph Cain have one-half of that lot. Who was it that understood that?

I understood that. I don't wish to be understood that by the simple act of setting that post is conveyed a title of ownership to Joseph Cain; that was completing a division in pursuance of a former understanding.

Had there been any such former understanding?

From their conversation then, and the fact that Joseph Cain was then living on and improving the premises, I understood there had been.

At the time of setting the posts did either Joseph Cain or Dr. Richardson say that point was the middle of the lot?

Yes; both of them.

Why did you not say so on your direct examination?

106 I think my language is perfectly plain on that subject. I understood from both of them that that was the middle of the lot, and I think I so stated. When I went up Joseph Cain had dug a little; the doctor placed his cane right in the mark. I took the spade, and while I was digging they were all talking, and I understood from all four of them that they were measuring to find the middle of the lot for the purpose of establishing a division line.

Was anything then and there said about Joseph Cain owning any portion of that lot?

It was distinctly stated there by the parties that Joseph Cain owned one side and the doctor the other. Joseph was then occupying one side and the doctor the other.

Who made such statement?

Both the doctor and Joseph.

What was their language?

Joseph said we want a fence between us here, and we want the line established. There was a good deal of talk, and I can't remember what he said; but his language and actions was to the same purport. Joseph said, "Now let us go and establish the lower line." And they all went down to the southeast corner of that half lot.

Were you asked on your direct examination the question following: "State as near as you can what was the exact words which passed between Joseph Cain and Dr. Richards when you set that post"?

Yes.

Why did you not then state the language of Joseph Cain which you have just given, viz, "That he said we want a fence between us here, and we want a line established"?

I stated on my direct examination that I understood from both of them that the object of the present measuring and establishing that stake was to divide their lot. It did not occur to me exactly then what he said.

Did you ever hear Dr. Richards say that he let Joseph Cain have that half lot?

Not in those words.

Do you know whether Dr. Richards ever owned it?

I never heard the doctor say in so many words he owned it; but I did hear him say he owned the other half, and that he wanted a fence there and the line established, and gave his reasons; and I have heard

Joseph say that he got the east half from the doctor. I think the statement was made in the presence of the doctor.

PETER VAN VALKENBURG.

Subscribed and sworn to before me this 2d day of September, 1872.

D. BOCKHOLT,
Probate Clerk.

107 JAMES MCKNIGHT, being first duly sworn, says:

Did you know Dr. Willard Richards in his lifetime, and, if so, how lo'g, and where did he reside?

I did, from October, 1851, until the day of his death.

Were you acquainted with Joseph Cain, and, if so, how long, and where did he reside?

It was from the fall of 1851 until his death, in Salt Lake City.

Where in the city did he reside?

On the corner of First South and East Temple street. He lived on the northeast corner, which is now known as the Emporium corner.

When did you first see M'r Cain living there?

In the fall of 1851.

What sort of a house did he then live in?

A small adobe house.

How long did he live in that house?

Until he built a new one adjoining the old one.

How long did he live in the new house?

Until the day of his death.

Do you know how much ground M'r Cain occupied? If so, state it.

Ten rods square, according to my knowledge.

Did he occupy from his residence up to the Emporium corner or not?

He did.

Who owned the ground so occupied by M'r Cain?

Mr. Cain himself.

Did you ever have any conversation with Dr. Richards on the subject of M'r Cain's occupying that ground? And if so, state what the conversation was.

I never had any conversation with Dr. Richards on the subject of M'r Cain's occupying that ground.

Did you ever hear him say anything on the subject to any one else, or make any declaration in relation to the same?

I have heard Dr. Richards refer to that ground as the Cain property.

How often have you heard him thus refer?

I could not state exactly the number of times, but several times.

What were the words he used in the form of his expression?

The Cain property or the Cain corner. Sometimes he used one of these expressions and sometimes the other.

What relation did you bear to Dr. Richards?

I was in his employ in the Deseret News office, from the fall of 1851 until his death.

During that time were you in frequent communication with him?

For a portion of that time I was, from 1853 to his death.

108 Did you ever hear Joseph Cain talk on the subject of that property while he was in possession?

(Objected to by counsel for Richards' claimants, on the ground of being hearsay.)

I understood from M'r Cain that he had obtained that ground from Dr. Richards.

Cross-examined:

Did you know anything as to M'r Cain's occupancy or ownership of that ground, otherwise than what he told you?

Nothing, except that he was in possession of it.

Do you know whether or not he was in the possession of the whole of that ten rods square?

He was, according to my best knowledge and belief. I know that other persons occupied a portion of the ground, but I understood it was by his permission. I know nothing about it only what I heard.

JAMES McKNIGHT.

Sworn to and subscribed before me this 4th day of September, A. D. 1872.

D. BOCKHOLT,
Probate Clerk,
Per E. W. EAST, *Dep.*

ANGUS M. CANNON, being duly sworn on the part of James Cain's heirs, says:

Are you the business agent of the Deseret News, and if so, have you the books belonging to it in your charge?

I am the business agent of the Deseret News, but the book-keeper has in charge the books from November 11th, 1867.

Are there no books of accounts of the Deseret News previous to the date you have spoken of?

I cannot say whether they are there or not, as there are many books there I am not acquainted with.

As business manager you have access to them, have you not?

I have not access to any prior to November 11th, 1867.

Do you know who had charge of the books of the Deseret News prior to that time?

No, sir.

ANGUS M. CANNON.

Sworn to and subscribed before me, this 5th day of September, A. D. 1872.

D. BOCKHOLT,
Probate Clerk.
Per E. W. EAST, *Dep.*

BRIGHAM YOUNG, sen., of lawful age, being duly sworn, says:

Were you here in the early settlement of this city?

Yes, I was.

109 Are you familiar with the manner in which the first settlers obtained their lots in Salt Lake City? and, if so, state how it was done.

It was very familiar to me at the time, but a great many things have passed from my mind. The city was laid out into blocks, lots and streets, and plots. At the request of the community, certain persons, myself of the number, laid out or dictated the laying out of the city. Those persons were myself, Willard Richards, and others.

Were there any portions of the city designated over which the persons you have named should have exclusive control in making this settlement?

No; I had exclusive control myself, that was at the commencement, and by the consent of the people.

At what period of time did you cease to have exclusive control?

Shortly after the settlement, by common consent, certain parties, among whom was Willard Richards, were allowed to select portions of the city in lots, in order that they might distribute lots to those whom they desired to have near them.

What part of the city was allotted to Willard Richards for this purpose?

That I cannot answer.

Do you know whether lot 6, block 69, was assigned to D'r Richards?

I am not able to say that it was.

From the first settlement up to March 6, 1852, how were the lots in Salt Lake City usually transferred from one party to another?

There were no regular deeds; it was very loosely done.

Were not the transfers frequently made by giving possession merely?

If there was no surveyor's certificate, then it was done by delivering possession of the lot.

After the first distribution of the lots, did you not continue to have exclusive control of all the lots in the city, and after that time did you not direct many of the lots to be divided up and others placed on them?

In some instances I did, when my counsel was asked. In others I did not.

Did you not in some instances divide the lots and put others than the original settlers on them without consulting the original settlers?

I never did, to the best of my recollection.

Do you not claim a portion of lot 6, the Eagle Emporium lot?

I do.

How much of that lot do you claim?

I cannot say; the records are here; I do not recollect. The record will show.

Do you know whether or not you claim it all?

I do not claim all the lot.

How much of the Eagle Emporium lot do you claim to own?

110 According to my recollection I can't tell without referring to the records.

Do you claim to own any of it?

Yes.

You hold a mortgage on a portion of it, don't you?

I do.

Who are the mortgagors?

The administrators of the Cain estate.

What was the consideration of the mortgage?

Five thousand dollars.

You also bought a piece of Ransohoff off of that lot, did you not?

I bought the improvements and a quit claim to the land.

What was the consideration of that deed?

I don't remember; it was in the neighborhood of $18,000 or $20,000.

Do you know who the grantor of Ransohoff was?

I don't know.

You do not know whether M'r Cain or the administrators granted in the first instance the Ransohoff property?

I don't know.

Would you not inquire into the title when making a purchase of that magnitude?

I expect I did and was satisfied with it, but don't remember now.

Did you ever hear that the Ransohoff property at any time belonged to Joseph Cain?

(Question objected to on the ground of being hearsay.)

I have lately, but never did before.

Did you ever hear of the heirs of Joseph Cain owning any portion of lot 6, block 69, plat A?

My recollection is not good. I will not be positive, but Joseph Cain by my consent, I think, got a piece of ground to build a house on. It is my impression that Willard Richards gave Joseph Cain a portion of that lot. I think that was the fact, and that he did it to have him near to his business, according to my recollection.

You say you were counseled about it?

I presume I was.

You did not have any claim to the lot at that time, did you?

I don't know whether this is one of the lots I gave to Willard Richards or not.

In that early day was it not unusual to divide lots in less fractions than one-half?

It was unusual, yet it was sometimes done.

Do you know how much of lot 6 D'r Richards gave M'r Cain?

I don't know whether he gave him any, but presume he did.

111 Did you ever distribute any of the lots on block 69?

I don't think I ever did individually.

After the other persons to whom you have referred as making the first choice had selected their lots, you say that you then made choice. Now, did the territory, or ground, which you chose, embrace any part of it?

It did not embrace that lot at that time.

You know that Joseph Cain built on lot 6, do you not?

I am quite sure he did.

Was Joseph Cain living on a portion of lot 6, in 1851?

I think he did.

Don't you remember he was living there at a very early day?

I remember his living there not many years after we settled here.

Do you know where he died?

I don't recollect.

Don't you remember he was living on a part of tha' Emporium lot at the time of his death.

I don't remember.

Were you present at his last illness?

I don't remember.

Do you know whether he made a will or not?

I do not.

Have you seen or had in your possession a deed to Joseph Cain of the east half of the Emporium lot?

No.

Do you remember of having sent Milton Musser, your agent, for such a deed to the administrators of Joseph Cain, or to M'r's Cain?

I know nothing about such a deed, nor do I remember sending for such a deed.

After M'r Cain's death, did you or not know that his family occupied the house that Mr. Cain built?

I think they did, but cannot say positively.

(Exhibit 13-6.)

Can you point out on the map what portion of that lot you claimed?

I can. I claim Nos. 45, 47, 49, and 51.

Do you claim to be owner of the property which you have described at the present time, and did you at the time you filed on it?

I do. I claim to be the bona fide owner of those pieces of ground I just mentioned.

You deeded the ground on which No. 45 stands to W'm Jennings, in 1861, did you not?

I deeded it as trustee in trust, or that is the way it should be, to W'm Jennings.

He paid you a lawful consideration for it, did he?

112 I expect he did, of course.

The property you deeded to W'm Jennings at that time belonged to the church, did it not?

I suppose it did.

Did the church ever hold any deed from Joseph Cain for it?

I don't think either the trustee or the church ever did.

Has W'm Jennings ever deeded it back to you?

No.

He is now in possession of it, is he not?

A part of the building he owns, but the Co-operative Company has it in possession.

You are the president of that institution, are you not?

Yes.

The Co-operative Institution pays M'r Jennings rent, does it not?

Yes.

M'r Jennings bought the Ransohoff property from you also, did he not?

Yes, he did; but I cannot remember whether in 1870 or 1871.

How much did W'm Jennings pay you for the Ransohoff property?

Eighteen or twenty thousand dollars.

Has W'm Jennings ever deeded it to you?

No.

Who occupies it at present?

The Co-operative Institution.

Does the Co-operative Institution pay W'm Jennings rent for it?

They do.

Now let me ask you, M'r Young, do you not consider M'r Jennings, rather than yourself, the real owner of Nos. 45 and 51, to which you have referred?

I consider myself the bona fide owner of the land (he owns the improvements), for which I wish to get my title, so as to give M'r Jennings a legal title.

What sort of a deed did you make to M'r Jennings?

A quitclaim deed.

Do you hold any deeds at all for that property on which you have filed and claim in the suit? And if so, state by whom these deeds are made.

I never have seen the deed, but I suppose from the heirs of Willard Richards.

Was not the deed or deeds from the heirs of Willard Richards subsequent to the time the heirs of Joseph Cain claimed the property in dispute, and after that fact came to your knowledge?

I don't think that was the case.

What consideration did you pay for the conveyance from Richards' heirs?

113 If I recollect, I paid some twelve or fourteen thousand dollars.

It was left to a referee and compromised.

In what? Was it paid in cash?

As far as I know it was.

Did not the compromise referred to embrace other matters besides the east half of the Emporium lot?

No.

Did they not convey to you at that time some property on the Richards lot?

No; I think not.

Will you state the facts in full in relation to the controversy arbitrated and settled with the Richards heirs, and how it originated?

I cannot, but refer you to my agent. My lawyer attended to the business for me, and as he reported to me from time to time, it was satisfactory.

I see from my memorandum you have deeded No. 47 to Bassetts and Roberts, April 10th, 1865; now, has any person except the Richards redeeded that to you?

No; it was deeded to the Co-operative Institution, and they own it at present.

When you took that mortgage from the administrators of Cain's estate, did you not know that the property belonged to the estate of Mr. Cain?

I supposed it did then, as I do now.

Cross-examined:

Do you own No. 49, as on Exhibit B?

I do, or am trying to.

Are you now in possession of it?

The co-operative store has it in possession, and pay me rent for it.

How long have you been in possession of it?

I sold the land to B. H. Young and purchased it back, probably in April, 1867.

Was your first possession of any portion of that lot the possession of the trustee in trust, or your personal possession?

The possession as trustee in trust.

What portion of that lot did you hold in that capacity; and when did that possession begin?

I do not know how much of the lot, or remember when such possession commenced.

Did that possession include No. 49 and the ground north of that to the corner embracing 49 and 45?

It did include those numbers; and if the trustee in trust was ever out of possession of the land from the Emporium corner south to, or including 49, he was reinstated at a very early date.

114 When did you first hear of the heirs of Joseph Cain claiming any portion of the lot north of the south line of No. 49?

That I cannot state.

Did you ever hear of them claiming that property until within a year or two?

No; it is quite a recent thing.

Do you remember one of the wives of D'r Richards coming to you at some time after the doctor's death, and stating that portions of that lot then in your possession belonged to the estate of D'r Richards?

(Objected to on behalf of Cain's heirs, because it is hearsay, leading in its form, and is not properly cross-examination.)

I have no recollection of anything of the kind; neither do I think they ever did.

How much of the Eagle Emporium lot did you have in your possession as trustee in trust?

(Objected to as leading, and not cross-examination, by Cain's counsel.)

I did suppose, and do now, from the best of my recollection, that my possession extended from the north line of the lot, where the Eagle Emporium stands, to the house of Joseph Cain.

State when that possession began, and from whom derived?

This will be better explained by the testimony of others. I will not undertake to answer from my own recollection.

Did you ever during the time you were so possessed of any portions of that lot, either before or after you conveyed portions of it to William Jennings and others, hear Joseph Cain, in his lifetime, his administrators or heirs since his death, lay claim to any portion of the land so possessed by you?

No; I never did till very recently.

Did your possession, as trustee in trust, exist prior to the death of Joseph Cain?

(Objected to as leading, and not proper cross-examination, by Cain's counsel.)

This question, like the third, can be better answered by others, undoubtedly, than I can do it.

Cross-examined by Cain's counsel:

Do you know of your own knowledge whether you ever were in possession of the Emporium lot, as trustee in trust, before the death of Joseph Cain?

I cannot answer that question without referring to records.

Did any one ever deed to you any portion of that property as trustee in trust?

I have no recollection of any deed being made.

115 Did you ever live on any portion of that lot?

No.

You say you have no recollection of any one having deeded you any portion of that lot as trustee in trust?

No.

Were not the deeds executed by you as trustee in trust?

They were or should have been.

Then until the deed to you of the heirs of Willard Richards you never had any personal claim to any portion of the Emporium lot?

No, not as an individual. I held it as trustee in trust.

The claim you make in this case in your declaratory statement is individual, is it not?

It is.

The only foundation you rest that personal claim on, then, is the conveyance of the heirs of Willard Richards to you?

(Objected to as being incomplete and irrelevant by Richards' counsel.)

In the first place, I claim a full and complete title from discovery, and also by having peaceable possession for many years. I suppose the property was turned out to liquidate a debt from Willard Richards to the trustee in trust, and I have a right to make my declaratory statements by virtue of a deed from the heirs of Willard Richards.

You have before stated you have deeded to Bassett and Roberts, Brigham H. Young, and William Jennings a portion of the property.

Since those deeds you have not been in possession and are not now, are you?

(Objected to as being irrelevant and incomplete by Richards' counsel.)

I refuse or decline to answer. I am perfectly willing to answer any question that will throw any light upon the subject, but to have questions cris'-cross I don't think it proper, and I am not willing to answer such.

SEPTEMBER 13—10 a. m.

HOWARD LIVINGSTON, being duly sworn on the part of Cain's heirs, says:

Were you acquainted with Joseph Cain in his life-time?

Yes.

Where did he reside when you knew him?

In Salt Lake City, on Main street, on what is now known as the Emporium corner.

Do you remember whether or not that property had any other designation by which it was known while Joseph Cain lived on it? And if it had, state what that designation was.

116 All I know is this: That one of the four corners from 1851 to 1854 was Williams' corner, another Goddard's corner, another Richards' corner, and the other Cain's. These parties lived on the several corners, which is the reason why they were generally known by these designations.

When did you first know of Joseph Cain living on the Emporium lot?

In the fall of 1851, as near as I recollect.

How long did he reside there?

Until his death, I think.

While he resided there who was the owner of the Emporium lot?

I suppose M'r Cain was. I don't know that he was the owner and don't know that he was not. I know he lived there, and when he was building there he told me he owned it. I frequently walked from the post-office with M'r Cain at the time he was building, and on such occasions remarks were made by M'r Cain.

(On that portion of the preceding answer those portions that M'r Cain told witness is objected to by Richards' counsel.)

Do you remember whether there was any fence running north and southwest of M'r Cain's house?

I can't say positively. My impression is there was.

On what part of the lot did M'r Cain reside while building his new house?

He resided in a small house north of the new house.

How far north?

I can't state exactly; it was some distance from the corner; my impression is it was quite as near First South street as to his house.

Was his new house a good or a poor one?

In those days it is what I would have called a good house for that time.

Have you any idea of its probable cost at that time? If so, state it.

From my present recollection I think it was a house that would have cost about $3,000. Everything was very high at that time.

Do you know anything about the value of ground in the vicinity of this house at that time?

No, I don't think I do.

You were one of the members of the firm of Livingston, Kinkaid & Co., were you not?

Yes.

Where did your firm do business?

In Salt Lake City, in what is now called the Constitutional Building?

How long did you do business in that house?

From 1850 to 1862.

117 Who built the building in which you done business?

It was built for Livingston & Kinkaid, in 1850, by President Young, as trustee, I think.

Had you a lease on the premises?

We rented it from year to year.

Do you know whether or not your firm ever proposed to lease Jennings' corner to build a store on, from Joseph Cain?

Not to my knowledge.

If anything of that sort had been contemplated, would you not have been likely to have known it?

Such a thing might have occurred without my knowing it, but I think I would have known it. At one time the partners talked among themselves about getting Richards' corner, known as Kimball & Lawrence's. I proposed this myself. We also talked of getting the Goddard corner.

Cross-examined by Richards' counsel:

How do you know that corner was known as Cain's corner?

Because M'r Cain lived there, and in general conversation it was so designated, as we now say Jennings' corner and Hooper's corner.

What Richards was it lived on Richards' corner?

A portion of Willard Richards' family; they did not, however, live immediately on the corner.

Was there no other by that name lived there than Willard Richards' family?

None other that I knew of; there might have been, as there were several Richards here.

How much land did Joseph Cain tell tell you he owned on that corner?

I don't know that he ever told me.

When was it he told you about it?

I can't say when; I don't remember; only it was at the time he was building the new house.

Do you know anything positively about the ownership of that lot at that time?

No; I do not.

You did the business of your firm in the East, and was there most of the time?

Yes; after 1853 I made frequent trips, sometimes two or three times a year, or some years two or three times.

How long would you usually be absent on those trips, and about what portion of each year would you be gone after 1853?

They varied very much; sometimes I was gone two or three months, sometimes longer; in 1859 I was gone most of the year.

118 During some of this time, when you were absent, might not your firm have proposed to lease the Jennings' corner without your knowledge?

It is possible; but I probably would have heard of it.

Re-examined by Cain's counsel:

Do you remember how much of the time you were absent in 1854?

I don't know; I can't state positively; it strikes me I left here in

October or November, but I can't say. If I went in the fall of 1854 I returned in 1855.

HOWARD LIVINGSTON.

Sworn to and subscribed before me this 13th day of September, A. D. 1872.

D. BOCKHOLT,
Probate Clerk,
Per E. W. EAST, *Dep.*

E. T. MUMFORD, being duly sworn on the part of Cain's heirs, says:

Were you acquainted with Joseph Cain in his life-time?

Yes.

How long did you know him, and where did he live?

I knew him in Illinois, and afterwards in Utah, Salt Lake City, till his death.

Where in Salt Lake City did he reside?

He lived on what is now known as the Emporium lot.

When did he commence to reside there?

I came here in 1849. At that time, I think, he was gone to California; his family resided on that lot.

At the date of his death what buildings were on that lot?

The dwelling house of Mr. Cain, and I think there was a small house north of M'r Cain's.

By whom was the dwelling house built?

I think by Joseph Cain.

In what year was it built?

I can't state positively; I think it was commenced in 1850, but it was some two years before it was finished. It might have been commenced in 1851.

During the time he lived there what fence was on that lot?

When he first went there the whole ward was fenced in one common field; afterwards that lot was fenced to itself

Was there any fence west of Joseph Cain's house, running north and south through the lot?

It is my impression there was, but I could not be positive as to that.

How much ground did Joseph Cain occupy then?

I am unable to tell.

Do you know whether Joseph Cain ever owned the Emporium lot or any portion of it?

I do not know.

119 Was that corner lot called the Eagle Emporium while Joseph Cain lived there; and, if not, was there any other designation by which it was known?

During the lifetime of M'r Cain it was frequently called Cain's corner.

Who was the reputed owner of that corner?

I can only speak for myself. I supposed M'r Cain owned it.

Did you ever do any work on M'r Cain's house when it was being built? At whose instance, and by whom were you paid?

It was done by a man by the name of Longstroth, but M'r Cain paid me. M'r Longstroth was a carpenter and did most of the work on the house.

Cross-examined by Richards' counsel:

What kind of work was it you did on the house?

Carpenter's work.

What part of the carpenter's work did you do?

I cased the windows up-stairs.
Was M'r Longstroth the chief or head carpenter on the building?
Yes.
Was the roof on at the time you went there?
Yes.
Were the floors in?
If I remember right the floors were in the lower part and part of the upper part.
Was M'r Longstroth working there when you were there?
Yes.
Was there any one else?
I don't think there was any other carpenters.
What year was that?
I don't remember, but think it was in 1852.
Do you know how M'r Longstroth was doing that job, whether by the job or day?
No; I do not.
What portion of the carpenter's work did he do or have charge of?
I can't tell. I was only there a short time, but I understood he was M'r Cain's carpenter.

Re-examined by Caine's counsel:

Do you know whether Peter Van Valkenburg done any work on that house or not?
He done work in the city; but I don't think he done any work then on that house.

E. T. MUMFORD.

Sworn and subscribed before me this 13th day of September, 1872.
D. BOCKHOLT, *Probate Clerk*,
Per E. W. EAST, *Dep.*

120 SEPTEMBER 14, 1872—10 a. m.

THOMAS MARSHALL, sworn on part of Cain's heirs, says:

You are a practicing attorney at law in Salt Lake City, are you not?
I am.
How long have you been so engaged; and who, if any person, was your partner?
I have been practicing law in Salt Lake City a little over six years. The first six months with W'm J. Appleby as a partner. Then after, until the first of August, 1872, with James M. Carter, under the style of Marshall & Carter.
Was your firm of Marshall & Carter ever employed in a controversy involving the title of lot 6, block 69, plot A, on which Jennings' Emporium building now stands; and, if so, by whom were you employed, and when?
We were so employed first about February or March, 1871, on the part of Cain's heirs by the Cain heirs. Legal steps were then delayed owing to the minority of Joseph Cain.
What were you employed by them for?
To prosecute the claims as heirs-at-law of Joseph Cain, deceased, for 10 by 10 rods on the corner now occupied by Jennings' Emporium or other buildings adjoining on the south. I ceased to have any connection with the case about three months past.
For what reason?
My reasons were that I was pressed with professional business at the

time I withdrew from the case of my clients. I then expected to go to New York, to be absent a long time on professional business, and immediate action and close attention was required to preserve the rights of the heirs. For this reason I advised to employ other attorneys.

During your employment did you ever communicate with or talk with Jennings about the claim of the Cain heirs to the ten rods square about which you have spoken?

Yes; several times.

State what passed between you in relation to this matter.

I can scarcely state in detail the several conversations; but near a year since I spoke to M'r Jennings of this claim as embracing the Emporium building, and extending south to Bayley & Sons' northern corner. Thereafter, I think in the fall or winter of 1871, M'r Jennings, Charles Crismon, Joseph Cain, and myself had an interview at my office, about half past seven at night, in an effort to adjust and compromise the claim. M'r Jennings asserted that the heirs could not possibly recover, and had no legal claim to any of said ground; but he would be willing to pay for a small square of ground on which the foundation of
121 his new brick building was possibly laid, as he thought they might give him some trouble about that piece, and I think the piece referred to is indicated in pencil on exhibit "B," back of Ransohoff's building. He said in that conversation that Willard Richards' heirs had some claim on that ground, and thought it was a better one than that of the Cain heirs.

Cross-examined by Richars' counsel.

At the time of the interview in your office was not the special matter under consideration a proposed sale by the Cain heirs, to Jennings, of the property occupied by Callahan, and also a confirmation of title to some property adjoining which had been previously transferred to the administrators of Joseph Cain's estate, or Mrs. Cain?

No; not that especially; that proposition was discussed, as were many others.

Did you tell M'r Jennings in express terms that you were employed to commence proceedings for the recovery of ten rods square on the Emporium corner?

I did not.

When did you have the first conversation with him on the subject, and how did it come about?

Some time previous to the interview heretofore mentioned, I met M'r Jennings on the street, and spoke of the claims there, and again I spoke of it in his private office west of Kimball & Lawrence's store. These conversations were mere causual conversations.

Who was present at M'r Jenning's office?

I don't remember.

In any of these conversations, are you positive you assured M'r Jennings that the Cains claimed ten rods square in that corner?

I don't think I said anything about the number of rods, or the exact lines of the claims. I spoke of the corner generally. The proposition or topic mostly discussed was this small piece of ground on which his building was erected. Because money figures were mentioned in regard to it, he would not entertain any proposition about the other portions of the claim.

Was any proposition made by you at that time as to the portions north of the Ransohoff building?

I think not.

Was there at any time?

The conversation in my office was the only lengthy conversation we ever had on that subject.

THOMAS MARSHALL.

Sworn to and subscribed before me this 14th day of September, A. D. 1872.

D. BOCKHOLT,
Probate Clerk,
Per E. W. EAST, *Dep.*

122 SEPTEMBER 17, 1872—10 a. m.

W. P. APPLEBY, being duly sworn on the part of Cain's heirs, says:

How long have you resided in Salt Lake City?

Since October, 1849.

Were you acquainted with Joseph Cain in his lifetime?

I was.

Where did he reside when you knew him?

He resided on the lot on which Jennings' Emporium building, in Salt Lake City, now stands.

How long did he reside there?

I first knew him in 1853, and he continued to reside there till his death.

Had he a family, and if so, how many?

Yes, he had a wife and two children.

Did his family reside with him on that lot?

They did until his death.

What sort of a house did he live in?

When I first knew him he lived in a small adobe house, a story and a half high, with an adobe shed on the south side.

How long did he live there?

I don't remember how long; I think only a short time; soon after I knew him he moved into a new house on the same lot; he lived there until he died.

Where was the first house he lived in located?

It was some six rods from the east front and some four rods from the north front.

Where was the other house situated?

I think the center of that house was some thirty feet from the south line of said lot on portions of the building on "Exhibit B," numbered 53 and 55.

During the time M'r Cain lived there were there any fences on said lot? And if so, describe them.

There was a pole fence on the west side of the lot, and a fence also on the north side, and some portion of the time a fence on a part of the east side. Then there was a division fence on the south at one time, but don't know how long it was kept up.

Are you certain there was any fence on the west, running north and south?

I am certain there was a quaking-asp pole fence.

What makes you so certain there was a pole fence there?

I used to play with other boys there, and swing and skin the cat on that fence.

Where was that fence located on the lot?

I judge about ten rods on the east line.

123 Why do you judge it to be about ten rods?

The reason is because the fence formed the west line of the alley way east of the Price property, and I judge that to be about ten rods.

Do you know when John Eddins lived on that lot?

John Eddins, if I am correct, did not live on the east half of the Emporium lot; he lived on the west half on the west side of that fence.

Are you positive of the fact that he lived on the west side of that fence?

I am positive he lived on the west side of that fence. There was a log building with two rooms on the east side of the fence.

What direction was this log building from the story and a half adobe house you first mentioned?

It was in the rear and a little south of that building.

Why are you positive that John Eddins lived on the west of that fence?

Because I have seen him at that house, and his family, all the family he had then. I mean the house on the west side of the fence. The log house mentioned was the only house near the fence on the east side.

When did you first see that fence there?

As far back as 1852. I passed by there two or three times a day for years up to 1860.

When you first saw that fence was there any alley way there?

No.

How long afterwards was it before you noticed an alley way there?

In 1864 or 1865.

Were there any bars near the northwest corner of that lot? And if so describe them, and state through what fence they passed.

There was a pair of bar near the northwest corner of the lot, in the fence on the north line, and about three pannels from where the cross intersected the line running north and south.

By the cross fence do you mean that east of Eddins' house?

Yes.

Did you ever visit Mr. Cain's house in his lifetime? And if so state how often.

I visited his house often, but could not say how many times.

While Mr. Cain lived who occupied the east half of the Emporium lot?

I don't know of any one occupying it but Joseph Cain in his lifetime, or parties leasing it from him.

Was the lot known by the designation of the Emporium corner in the lifetime of Joseph Cain?

No.

Had it any designation at that time, and if so what?

124 It was known as the Cain corner.

Who was the generally reputed owner of that lot during the lifetime of Mr. Cain?

Mr. Cain was.

After his death who occupied that half lot?

Mrs. Cain, I think, continued to occupy it for some time.

Do you know whether she occupies any of it at present?

I do not know.

Cross-examined by Richards' counsel:

Did Joseph Cain ever tell you he owned the east half of that lot?

No, sir.

Did any person during his lifetime tell you he did?

No, sir; I do not think they ever did.

Did you ever hear any person during his life-time say it was his?

I cannot be sure I ever heard any one say it was his; he had the same evidence of ownership that others had.

How do you know then that he was the generally reputed owner of that lot?

I never heard any one say he owned the property, but heard it spoken of as the Cain corner.

Who leased that lot or any portion of it from Mr. Cain?

Daniel Grenig was the first one I saw occupying any portion of it.

Did he ever lease any portion of the premises outside of his residence?

Snelgrove occupied the shed adjoining the adobe house, but I don't know of whom he got it.

You say that during Mr. Cain's lifetime, you don't know of any one's occupying the east half of that lot but Mr. Cain or parties leasing from him. Do you know he occupied it?

I know he did.

Do you mean to say you know he occupied the whole of that half lot?

Joseph Cain occupied the adobe house in which his family lived, and the old adobe house out of which Mr. Cain moved was occupied by Snelgrove, and there were no other houses but the log house. That was used for a stable and afterwards moved.

When was it you and other boys first played on that fence as you have said?

I think it was in 1852 shortly after we moved up in that neighborhood.

Who owned the fence there and the property on the west side of it?

Either Longstroth or Richards owned the portions west of that fence.

How far was Eddins' house from that fence?

125 I judge about three or four rods. I know a portion of it was used by Riley as a chair-shop.

What time did Eddins live there?

In 1852 and 1853. He may have lived there before and after, but don't remember.

Where was the Price property you spoke of?

It was something of a later date. It occupied the half lot on the west.

What kind of a house did Eddins live in?

He lived in an adobe, one story, dirt roof.

You say it was afterwards occupied by Riley as a chair-shop. Who owned it at that time?

I don't know. It was designated as Riley's chair-shop.

Was that the same place that was afterwards known as the Price property?

Not exactly on the Price property, but it was in the rear of what is known as the Blazzard property. It was vacant between Eddins' line and the east line of the lot.

Which way was Price's house from the house or place occupied by Eddins' house?

It was east and rear of First South street.

How far east?

It was two or three rods or a rod and a half due east.

Then the place where John Eddins lived was the place where the Blazzard property now stands, was it?

It was immediately south or in the rear of the Blazzard property. I do not know how far the Blazzard property extended.

May you not be mistaken about the location of the Eddins house, with reference to the Blazzard property?

I am not mistaken as to its being in the rear of the Blazzard property, though it might , say, eight or ten feet east or west.

What time in 1853 was it you became acquainted with Mr. Cain?

I knew him earlier than that time. I don't know at what time I became personally acquainted with him.

How many rooms altogether were there in the little house he lived in when you first knew Mr. Cain?

They might be called three rooms, the first story, the half story, and the shed on the side.

On which side of the principal building was the shed?

On the south side.

Who occupied that building next after Cain moved out of it?

Snelgrove for one, and a whip-maker by the name of Shearer. My recollection is that these were the next occupants after Cain, but am not positive.

126 When you first became acquainted with that lot what use was made of the log house mentioned by you?

My recollection is that a wife of Dr. Willard Richards and a young girl, a sister of John Eddins, were living there. I am positive that the latter lived there. She is now the wife of F. B. Tripp.

Were they living in that log house any portion of the time John Eddins lived, or was living, west of that fence running through the lot?

Yes; they lived there but a short time after I became acquainted with the place.

How many poles high was that fence?

I think three. I remember the poles were very wide apart.

Are you positive that fence was on the east line of what was afterwards known as the Price property, and that it was also on the west line of the alley-way you mentioned?

It was the west boundary of the alley-way subsequently, and Price afterwards built a new fence where the old one stood. This alley-way is covered by part of Jennings' new building, marked on Exhibit B as part of Jennings' new building.

How wide was that alley-way?

I suppose some twelve feet at the north front.

About how far was that log house west of the little adobe house occupied by Mr. Cain?

From four to five rods west and a little south.

How far west from the log house was the fence on which you played?

About two rods west.

Have you not had a talk with some persons about that fence lately?

No, sir.

Who told you those bars were there?

No one. I passed through them frequently while the log house was used as a stable. There was a corral in the northwest corner of that half lot, and those bars led into this corral. The bars were there before the corral.

About what length of time was that corral there?

It must have been there two or three years.

Re-examined by Cain's counsel:

You say the new fence Price built was on the line of the old; are you positive of that?

Yes, for there was a portion of that old fence remaining only four or five years ago.

When you saw that alley-way in 1864 or 1865, was there any fence west of the alley?

There was.

127 Was it the same fence built by Price?

No; it was south of Price's fence.

Are you positive that last-mentioned fence was on the line of the old fence?

Yes; when I noticed the alley I went and took a look at it.

WILLIAM P. APPLEBY.

Sworn to and subscribed before me this 17th day of September, A. D. 1872.

D. BOCKHOLT, *Probate Clerk*,
Per E. W. EAST, *Dep.*

VINCENT SHIRTLIFFE, being duly sworn on the part of Cain's heirs, says:

Were you acquainted with Joseph Cain in his life-time, and where did he live?

I became acquainted with him before coming to this valley in 1847, and after coming here until the time of his death. In 1851 I went on a mission. In the fall of 1853 I visited Mr. Cain, and he then lived on the Emporium lot, in Salt Lake City.

How long after you returned did he live there?

I don't know.

At the time you visited M'r Cain do you know who owned the east half of the Emporium lot? And, if so, state whom, and how you know that fact.

I supposed he owned it from a conversation I had with him at that time. He and I were speaking about lots. Mine was much more productive than his. He said he wished he had got a lot in some place more productive, as he could not raise much of anything on his. He said he would trade it for a lot more productive, and presumed he could.

(The foregoing answer objected to by Richards' counsel on the ground of its being hearsay.)

Where were you when this conversation happened?

At his house.

Did he say anything about how he got his lot; and, if so, what?

I asked how he came to take that lot, and he said Dr. Richards let him have it, as he wished him to be close by him, or wished him to take that lot; he (Joseph Cain) was calculating to be adopted to him.

Was anything said about how much he owned?

The conversation was about this: that he believed he could trade that half lot for a whole lot down by where he lived, in the fourth ward, and it would be much more productive.

Was there any other conversation on that subject?

I think not on that subject.

128 Recross-examined by Richards' counsel:

Will you give M'r Cain's exact language as near as you can in reference to his getting that lot?

I supposed he got the lot the same way I got mine—that was by paying the surveyor for surveying the lot, which I think was $1.25; but he came in possession of that lot, as I understood, by the counsel of the doctor. The doctor counseled him to take it because the doctor wanted him near by himself. The exact language M'r Cain used I cannot give.

Was this understanding of yours as to the manner in which M'r Cain received this lot from the doctor in this conversation alone?

Yes, it was.

Djd M'r Cain have at that time, or had he had at any other, a lot in Salt Lake City?

I understood that was the first lot he had had, but do not know.

As he spoke of trading his lot for another he was dissatisfied with it, was he not?

He answered he did not like it, and wanted one more productive; he added further—it now comes to me—he did not know but he would have to live there; that if he went away it would be against the doctor's counsel.

VINCENT SHIRTLIFFE.

Sworn and subscribed before me this 17th day of September, A. D. 1872.

D. BOCKHOLT, *Probate Clerk*,
Per E. W. EAST, *Dep.*

JOSEPH HARKER, being duly sworn on the part of Cain's counsel, says:

Were you acquainted with Joseph Cain in his life-time?

Yes.

Where did he live during the time you knew him?

I traveled with him from the States to this Territory; after we arrived here I herded cattle with him six or eight months. He then lived in the Old Fort six or eight months, and then he moved into the seventh ward; he lived there one or two years, and then moved on the lot which used to be called the Cain lot, where Jennings' Emporium building now stands, and he lived there until he died, as I understood.

Are you certain the lot he lived on was ever called the Cain lot?

Yes; it was called so by me and my neighbors.

For what period of time was it so called?

So long as I knew anything about it; from the time M'r Cain moved there up to his death.

Did you ever visit M'r Cain while he lived on that lot; and, if so, how frequently?

Yes; I visited his house, and my family visited it also very frequently.

129 Do you know what year he moved into the Emporium lot?

I could not say definitely; I think it was in 1851.

What sort of a house did he first move into, and where was it located?

A small adobe house about three or four rods from Main street, and I ate dinner with him there twenty years ago last Sunday, near the ground designated on Exhibit B as 49.

How long did he live in that small building?

I think about one year.

Where did he go then?

He moved out into a house which he built on the same lot, southeast of the little one.

Were there any fences on the premises at that time? And, if so, describe them.

There was a fence on the south line of the lot; as to the east and north I have no particular recollection. There was a fence on the south, and as near as I can remember there was a fence on the west.

How far back from Main street did that west fence stand, and how did it run?

It was about ten rods, I judge. The lot was square; the west fence run north and south, as near as I remember.

Do you know where John Eddins lived on that lot?

I can't say positive; I remember a little house standing about three rods south of First South street and west of the fence, and about a rod west of the fence running through the middle of the lot.

Do you remember what that fence was composed of?

No, I can't say.

Do you know how much ground Mr. Cain occupied then? And, if so, state it.

As I understood, he occupied the ten rods square.

Were you ever in the employ of Mr. Cain?

No further than I sold him a load of lumber and delivered it there.

Was it before or after he built his new house?

It was before.

Where on the lot did you deliver the lumber, and how did you get in and how did you get out?

I drove in from Main street from the south side of the little house. I piled the lumber on the south side of the little house near the southwest corner. Can't tell how I got in or where I got out. I can't remember.

While Mr. Cain lived on that lot, who was the reputed owner of that ten rods square?

(Objected to by Richards' heirs' counsel on the ground of being hearsay.)

130 Mr. Cain. I never heard anything to the contrary.

You spoke of a meat-shop. Will you explain fully what you know about it?

I was on a visit to Mr. Cain, I think in the fall of 1853, and a meat-shop had been started on the southeast corner by N. V. Jones. I told Mr. Cain, if I knew he was starting a butcher-shop I would have rented it for butchering. He replied, "If you had asked me in time, I would just as leave you had had it as N. V. Jones."

Were you acquainted with John Bollwinkle while he lived at Mr. Cain's?

Yes.

What was his occupation during Mr. Cain's lifetime?

About 1853 he used to be in Mr. Cain's employ; worked about the printing office.

Cross-examined by Richards' counsel:

How do you know John Bollwinkle worked in the printing office in 1852?

I saw him there.

What was he doing there?

He was giving the newspapers out.

Did you see him doing anything else?

I don't know that I did, particularly.

How often was the papers issued then?

I believe once a week.

Did Mr. Caine ever tell you he owned that lot?

I don't know that he ever did positively.

How do you know it was generally reputed to be his?

Because he lived on it and occupied it as the owner, and I sold him a load of lumber to improve it with.

Are these all the reasons you have for saying it was generally reputed to be his?

Because Mr. Cain lived on it and improved it. I don't know of any others.

You say he occupied ten rods square. How do you know that fact?

Because his house and improvements were on it, and some old wagons were on the west side. That is the most I remember being on at that time.

Whose wagons were those?

I can't say. I never asked Mr. Cain.

Don't you know there were other persons than Mr. Cain's family living there in 1853 or 1854?

I did not know there was.

131 What use was made of the little house after Mr. Cain moved out of it?

I don't remember; believe it was turned into a whip factory.

How many rooms were in that small house?

I think it was in one.

Was there any upstairs to it?

I don't think there was.

Was there a shed room on the south side?

Not at the time I took the lumber there.

Were you frequently out about Mr. Cain's premises, particularly on the west side of the lot?

No, sir; not on the lot, I was not.

From which side did you enter in going to Mr. Cain's house?

From Main street, on the east side.

What is it makes you remember there was a fence on the west side of the ten rods square, when you cannot remember whether there was a fence on the north and east side?

There was a fence, I believe, between that lot and the little house on the west half of lot west. I remember because I do remember, and if I remember correctly, it was made of slabs; I cannot say positively, but it seems so in my mind.

You say you were not in the habit of going out to the west part of Mr. Cain's premises, that you were in the habit of entering from the east. Now, don't you think you would have been more likely to remember whether or not there was a fence on that side than on the west side?

I remember it probably from examining those old wagons; it looks reasonable that I should remember the fence on the east, but I do not.

When did you first see the little house in which Eddins lived?

Some time about 1853 or 1854.

Was it then when you first saw the west fence?

I cannot tell you.

Did you know that fence was ten rods from Main street, or did you merely guess at it?

I merely guessed at it.

Where did your neighbors live who called it Mr. Cain's lot?

They lived over Jordon, about seven miles from Salt Lake City. We used to come in to meeting and tie our horses to that fence. I generally tied mine to Mr. Pixton's.

JOSEPH HARKER.

Subscribed and sworn to before me this 17th day of September, A. D. 1872.

D. BOCKHOLT,
Probate Clerk,
Per E. W. EAST, *Dep.*

132 SEPTEMBER 19TH, 1872—10 a. m.

F. D. RICHARDS, being duly sworn on the part of Cain's heirs, says:

You are the administrator of the estate of Willard Richards, deceased, are you not?

Yes.

When were you appointed?

In May, 1857.

Had there been an administrator before you; and, if so, whom?

Yes; Joseph Cain was administrator before me.

Do you know long Joseph Cain acted as administrator?

I don't know. I think he was the first administrator and acted as such to the day of his death, after which I was appointed.

When you were appointed, was the book of Joseph Cain in which he kept his accounts with the estate of Dr. Richards turned over to you; and if so, is it in your possession?

Yes; this is the book.

Are there any accounts of Joseph Cain in this book with the estate of Dr. Willard Richards?

I think there is an account in that book headed "The estate of W. Richards."

In whose handwriting is that account?

I can't say positively. I suppose it to be in the handwriting of Joseph Cain.

In your administration of the estate of Dr. Willard Richards, you have frequently seen what purported to be the handwriting of Joseph Cain; does the handwriting in this account correspond with other documents which you have seen purporting to be in Joseph Cain's handwriting?

Yes, sir.

How long have you resided in this Territory?

I came into the Territory in the fall of 1848.

Do you know how the early settlements of Salt Lake City were made, and under what arrangements the first settlers obtained their lots? If so, state how it was done in detail.

When I arrived, in 1848, I found that Salt Lake City plot had just been surveyed; and I was informed by my uncle, Williard Richards, when my father, my brother, and myself would receive our lots together.

Do you know by what authority he gave such consent?

I understood he gave me that direction in pursuance of some arrangement entered into and understood among the leading men and people of the settlement.

Was not the early settlement under the management and control of the leaders of the church, President Young, Heber C. Kimball, Willard Richards, and John Taylor and others?

133 I presume it was.

Was it not generally so understood?

Yes; that was so generally understood.

After entering upon your duties as administrator, did you ever make

any inquiries as to what land claims belonged to the estate of Willard Richards, deceased; and if so, what inquiries?

Yes; I went to Judge Smith for information.

Did you ever hear that the east half of lot 6, block 69, plot A, on which the Eagle Emporium building now stands, belonged to Dr. Richards?

I heard my cousins say they thought it did, and that they intended to inquire into it. This occurred in the last two or three years.

Previous to that time, did you ever have any interview with your cousins relating to the estate?

I have talked frequently with Heber John about the general affairs pertaining to the estate.

Through what period of time did these conversations extend?

Occasionally ever since I was appointed administrator.

Cross-examined by Richards' counsel:

Has this book been in your possession ever since you were appointed administrator?

Yes, sir.

From whom did you get it?

I think from Judge Smith; I will not be positive.

Do you know that Joseph Cain kept his accounts with the estate of D. Richards in that book, or is your information only hearsay?

No, I don't know that he kept any account in that book. All I know about it is that it was delivered to me as his book of accounts with the estate, and was in his handwriting.

How do you know it was in his handwriting?

I don't know it was his handwriting; but presume it was, and believed it was his. I believe it for the reason stated in a former answer.

Did not Heber John and Willard Richards both tell you more than two years ago that they knew the Emporium corner belonged to their father's estate; and did not Willard state that he meant to know how it was Brignam Young got possession of it when the family of his father had drawn rents from it until a long time after his death; or did they not make statements to you to that effect?

How long ago I will not undertake to say, but they told me they thought it belonged to their father's estate, and they intended to inquire after it or find out.

How long since you returned from Europe the last time?

I think in September, 1868.

134 Were not conversations had soon after that in which these statements were made?

I think the first of the conversations took place after Heber John returned from New York, at the close of his medical studies.

F. D. RICHARDS.

Sworn to and subscribed before me this 19th day of September, A. D. 1872.

D. BOCKHOLT,
Probate Clerk,
Per E. W. EAST, *Dep.*

SAMUEL W. RICHARDS, being duly sworn on the part of Cain's heirs, says:

Did you ever see Joseph Cain write in his lifetime?

I have, frequently.

Are you familiar wfth his handwriting?

I am.

What makes you so?

Having had a good deal of correspondence with him, and in making up accounts in which I have been interested.

(Here counsel for Cain showed witness the accounts contained in a book produced by the administrator of the estate of Dr. Willard Richards, in which is contained the following account, on pages 203, 204, and 205, "estate of W. Richards"; also the accounts contained on pages 224, 225, 226, 227, and 228, headed, "General family accounts." Will you look on pages 203, 208, and 205, and tell whose handwriting it is in?

I recognize that as being in the handwriting of Joseph Cain.

Examine the account on pages 224, 225, 226, 227, and 228, and state if you know whose writing it is.

I recognize it to be the same handwriting as the other.

Was there any member of Dr. Richards' family named Heber John?

There was; his oldest son.

Was there any one of his family named Mary?

I am not positive.

Was any of his family named Susannah?

There was one of his wives by that name.

Was there any by the name of Susan?

There was; she was a wife, I think.

Repeat, if you can, the names of the other members of the family, if there were others living at the time of these accounts.

I think there was one named Sarah, Minnie, Mary, and Phebe Ann. There were also, Mrs. Franklin, Mrs. Braddock, Heber John, Willard, Joseph, and a number of others.

135 Cross-examined by Richards' counsel:

You say there was one of Dr. Richards' family named Susan, who you think was a wife; do you know whether she was his wife or not?

I do not.

Was she his daughter?

I am not positive.

How do you know she was one of his family?

The name was familiar in the family, but I cannot now identify the person by that name.

S. W. RICHARDS.

Subscribed and sworn to before me this 19th day of September, A. D. 1872.

D. BOCKHOLT,
Probate Clerk,
Per E. W. EAST, *Dep.*

SEPTEMBER 25TH—10 a. m.

CHARLES CRISMON, jr., being duly sworn on the part of Cain's heirs, says:

What relation do you bear to the family of Joseph Cain, deceased?

Son-in-law to Joseph Cain, deceased.

How many children had Joseph Cain, and what were their names?

He had two, Lizzie T. Crismon, my wife, and Joseph M. Cain.

They were both living at the death of their father, were they not?

I suppose so; they are living now.

Do you know Joseph Horne, who testified in this case on behalf of Brigham Young?

Yes.

You heard him testify, did you not?

Yes.

Did you ever have any conversation with him in relation to this case or hear a conversation between him and Joseph M. Cain? And, if so, state what occurred.

(Objected to as irrelevant and hearsay by B. Young's counsel.)

I have heard conversation between him and Joseph M. Cain, and have had conversation with him myself, in relation to this case. In looking up witnesses and preparing this case, we found where Joseph Cain had appraised part of lot 6, block 69, plot A, to the estate of Willard Richards. I spoke to Joseph Cain and asked him if he had ever talked to Joseph Horne on the subject. He said he had, over a year ago, and did not remember anything about it until he showed him the protest of Joseph Cain against the appraisement of a portion of lot 6. About two months ago Joseph Cain and myself went to Joseph Horne, and Joseph Cain asked him if he had refreshed his memory so that he could give any further light on what portion of this lot he had appraised. He said he had looked over his memorandum books as to what portion of the
136 lot he appraised then. I asked him if he could not remember the amount and part of that lot he had appraised. He said it was a great many years ago and he could not remember. I asked him if it might not be some portions of the west half of lot 6, block 69. He said he could not say; it might be a portion of the west half, or it might be a portion of the east half. That at this distant day he could not remember. I asked him, or Joseph Cain asked him, if he did not work for Joseph Cain, deceased. He said he believed he did do some work for him. We asked him if he knew what portion of that lot he occupied and owned. He said he could not say, that the only thing he knew, it was called Joseph Cain's lot. We asked him if he could not remember anything about the fences. He said he remembered seeing fences there, but could not trace them; that he had paid no attention to them.

For what object did you go to see Mr. Horne?

To see if we could get any information about the property.

Do you know William Jennings?

Yes.

Have you ever had any conversation with him on the subject of the claim of the heirs of Joseph Cain to lot 6, block 69, plot A; if so, when and where?

I have had two different conversations with Mr. Jennings. The first was over a year ago behind Hague's gun-shop. The conversation was mostly between Joseph M. Cain and William Jennings. Mr. Jennings asked us to go in behind there, that he wanted to talk with us. William Jennings said by examining the records that a portion of his new building, I believe he said about a rod, was on the estate of Joseph Cain. I will not be positive whether he said by examining the records or his deeds, and he wished to purchase that property of us. He proposed to give, I believe, six hundred dollars for it, so he could go on with his new building. He gave us to understand he did not wish to make any other improvements till the matter was settled. Joseph Cain asked him if he did not want to buy any more than that. He said he had about all the land he wanted, but asked Joseph what he would take for that

piece and the Callahan property. Joseph asked me what I thought about it. I told William Jennings that we were not able to say what we would take for it; that if he wanted to make a purchase or compromise, I referred him to Marshall & Carter, our attorneys, as it was in their hands, and we had no right to dictate any terms. He made the remark that there was not much left of the property, and we were very foolish to allow the lawyers to eat the balance of it up. We told him that we did not consider and had been advised that the disposition of the property had not been legal, and we proposed to have our rights whatever it might cost. Joseph finally asked him what he would give for our interest of all the property above the Callahan building
137 to the Eagle Emporium corner. He said he was not aware, and seemed to be surprised that we claimed anything north of the Ransohoff building. Joseph told him we had good reason to believe it was ours, and we proposed to contest all of it. He seemed to be very much vexed and annoyed about it, and gave us to understand that he bought a portion of the property from Brigham Young, and Brigham Young would make his title good. We finally made an appointment to meet at Marshall & Carter's office and try to settle on something. We met at Marshall & Carter's office between seven and eight o'clock, I believe, that same evening, and Marshall and W'm Jennings talked the matter over in presence of myself and Joseph Cain, but could not make any terms. Jennings seemed to be very much provoked, and gave Marshall to understand that he might commence action at law as soon as we pleased. After Mr. Jennings came in he asked what we had to say about it, and Mr. Jennings asked Marshall if he had any proposition to make. Marshall asked him what property he wanted. He said he would like to have the signatures of the heirs to the Ransohoff property that the mother sold, and the back ground behind, and he would buy the Calahan building. Marshall told him that he would give the titles to these properties for seventeen or nineteen thousand dollars. I am not positive which. Jennings said he would not give it; he had bought the Ransohoff property in good faith, and the heirs ought to back up what the mother did, and also there was a mortgage amounting to about nine thousand dollars on the Calahan property. Marshall gave him to understand that he considered that mortgage illegal, and that the administrator had no right to mortgage a homestead of any deceased, and he proposed to set it one side.

Was there anything said in relation to the property north of the Ransohoff property in that conversation?

That property was mentioned. Jennings said that he did not care anything about the title of that portion of the land; he was safe enough; that Brigham Young sold it to him, and he should hold him responsible for it; and he advised the best thing we could do was to drop it, because there was a title older than ours that would take it all. Spoke of Richards' title, and Marshall gave him to understand it would be for the courts to decide.

Do you know where Bailey & Sons' property is, on East Temple street, south of the Emporium Lot? If so, state where it is.

It joins the southeast corner of lot 6, block 69, plot A. I saw it measured.

Cross-examined by Richards' counsel:

You are one of the parties to this contest, and have an interest in the result of it, have you not?

Yes.

138 You say you heard Joseph Horne testify in this case. Did you not also hear that of W'm Jennings?

No.

When and where was the conversation held with Joseph Horne and Joseph Cain, at which you were present?

It was on the northeast corner of the sidewalk, near Bishop Hoagland's residence, about two months ago; it may be less.

Who introduced the conversation, and what language was used in doing so?

Joseph Cain introduced it, saying, "Brother Horne, have you refreshed your memory about this property of my father's up here?" or something of that kind.

Are you positive this was the way the subject was introduced?

Yes.

Did you ever have or hear any other conversation with M'r Horne in relation to this case?

No; I don't think I ever did.

You say he replied to the question of Joseph Cain that he had looked on his memorandum books. What kind of books did he refer to?

I do not know; I did not see any.

Did he use the word memorandum?

He did.

Now, instead of saying he had looked over the books and could not find what was wanted, did he not remark that he thought he might find something by looking over them, or words to that effect?

He said he had looked over them, and could not give any light further than he had already stated.

By what language did you or M'r Cain refer to this property now in controversy at the time of that conversation?

We, or first Joseph Cain asked him, "Brother Horne, have you refreshed your memory any more?" or "have you refreshed your memory to know what property you have appraised?"

Do you know that M'r Horne knew that Joseph Cain was alluding to the property in controversy?

He certainly must have known, for we asked about the fence, and about the occupation, whether he ever did any work on that lot, and if he knew what portion M'r Cain owned, and what portion, if any, he appraised to D'r Richards.

Do you know what William Jennings testified to in this case?

I do not know all. I have heard portions of his testimony spoken of.

What portions did you hear spoken of?

I heard that portion in reference to his occupation, and that he did not, till very recently, know of any controversy about any but a very small portion of the ground he claimed, and that he said he was not a
139 party to this suit, and I heard Joseph Cain and M'r Baskin talk about it, and I also heard said he did not know we claimed any north of the Ransohoff property.

How much over a year ago was it you had the first conversation with Mr. Jennings about it?

It seems to me something over a year ago.

How do you know it was more than a year ago?

I know it was directly after I was married, which was the first of June, 1871. I know it was warm weather, I think in August.

How long after that was it till the interview at Marshall & Carter's office?

I am not positive; I think it was the same night we had the first conversation.

How did the interview at the office of Marshall & Carter come about?

M'r Jennings was building at the time, and was uneasy about the title, and was trying to get Cain's heirs to deed over to him a certain portion of land behind the Ransohoff building, and also to perfect the title to the Ransohoff building, as it was purchased before the heirs had become of age; also, Marshall & Carter were our attorneys, and we made a proposition for appointment for William Jennings to meet said Marshall & Carter at their office, and for them to attend to it as such.

How long before the meeting at Marshall & Carter's office was it before you were apprised of it?

It was in the forenoon or afternoon of the same day; Joseph Cain sometime in the day, and after our first meeting with Jennings, told me that Jennings wanted to see us again. I told him if Jennings wanted to talk to us any more we would meet him at Marshall & Carter's office, and if he had any propositions to make to make them there.

Did you arrange the meeting there with M'r Jennings yourself, or was it arranged by some one else?

By some one else; it was arranged, I think, by Joseph Cain.

On the occasion of the interview at Marshall & Carter's office, who mentioned the subject of your claim to the property north of the Ransohoff building?

I am not positive about that. I am not certain, but Joseph Cain. When the proposition was made, some one asked the question whether it would take in the corner, and Jennings quickly replied that he did not care anything about that; he knew all about his title to that, and felt perfectly safe.

What was the principal subject discussed there at the time?

Titles, prices of property, and the legality of the way it had been handled, mortgages, &c.

Was not the chief matter considered then, at the time, the
140 purchase of the Callahan property by Jennings and the small piece on which his new building was situated, and especially the latter?

No. The Callahan building was talked of less than any. The main talk was of this little piece and the Ransohoff, as it had not been administered on and was sold by M'r's Cain before the heirs became of age, and he wished to get the deed from the heirs.

Will you again repeat the conversation you had had with M'r Jennings in the rear of Hague's gun-shop, as nearly as you can now remember it?

I was standing in front of Hague's gun-shop and William Jennings came along and wanted to know where Joseph Cain was. I told him he was in behind, and before he went in says he, "Well, I want you to use your influence with Joseph Cain to try and get this matter fixed up." Said he, "I don't want to put up large buildings there and have to tear down part of them." I told him I thought it could be managed. We went back together and he spoke to Joseph. Said he, "Here you are; I have found you at last." I started to walk off, and he called me back. Said he, "You are a party interested now too. I want to talk to both of you." Now, said he, I think it was $500 or $600 he said he would give for that small piece of ground. I think he said it was a rod in behind the Ransohoff building. Also he said I want you and your sister to sign deeds and back up what your mother did. He offered to

buy the Callahan property and pay the mortgage on it anyhow. The amount that he offered would not much more than pay the mortgage. Joseph Cain made the remark that he saw no benefit in settling it at that price, and gave him to understand we did not care anything about that mortgage; that we had asked legal advice and did not consider the mortgage was legal. That the administrators had no right to mortgage the homestead of any heirs of the deceased or minor heirs. He gave us to understand that he did not care anything about that; that we ought to sign deeds and back up what M'r's Cain, the mother, had done about the Ransohoff property. Joseph Caine asked him what he would give for our title to the Callahan building and the small piece of ground and the Ransohoff property and a clear title up to and taking in the Eagle Emporium. He seemed to be very much surprised that we should claim anything above the Ransohoff property. Joseph Cain said that he had good reason to believe that it all belonged to his father, and he proposed to contest it. William Jennings gave us to understand that he cared nothing about our title to anything above the Ransohoff property; that he had purchased from Brigham Young that Eagle Emporium property, and that he would make him make his title good. I think I made the remark myself, that it was no use talking about it; that if he had any propositions to make to go to Marshall & Carter, our attorneys. He thought we were very foolish for putting it
141 into the hands of lawyers, for they would eat it all up. He advised us to sell that Callahan property, and pay off President Brigham Young's mortgage, and clear off what little property there was left and then take care of it. There were other things talked over I cannot think of.

What time in the day was this?

I think about 10 o'clock, just after we had come from breakfast.

Was there no conclusion or agreement made at all?

None whatever.

Did you not, on that occasion, agree for Mr. Jennings to come to Mrs. Cain's that evening to get some deeds which Joseph Cain promised he would have executed for portions of this property?

No; there was nothing said of deeds at that time.

Was there not an agreement for Mr. Jennings to come to Mrs. Cain's residence that evening?

Not that I remember.

Don't you remember whether there was or not?

I remember there was not, as when Mr. Jennings left he was mad, and said he would tear down what was on the small piece of ground; that he could move it, as there was not much more than the foundation laid.

At the time of this conversation was there any arrangement for any subsequent meeting at all.

There was no permanent arrangement. We gave Mr. Jennings to understand that if he had any propositions to make he should make them to Marshall & Carter. He said he did not want to talk to lawyers, he wanted to talk to us.

Will you refresh your memory as to how long it was after this interview before the one at Marshall & Carter's office?

Can't say positive; it might have been the same evening, or it might have been two or three days afterwards.

Are you positive it was not longer than a very few days afterwards?

I am. It was but a very few days afterwards.

Can't you remember whether it was the same or a subsequent day to

this first conversation, that Joseph Cain told you Jennings wanted to see you again?

I cannot.

CHARLES CRISMON, JR.

Sworn to and subscribed before me, this 25th day of September, A. D., 1872.

D. BOCKHOLT,
Probate Clerk,
Per E. W. EAST,
Dep.

OCTOBER 3D, 1872.—10 a. m.

DANIEL SHEARER, sworn and examined on the part of the Cain heirs, says:

142 When you rented the little adobe house from Mr. Cain, of which you spoke in your former testimony, was it your intention to place a shoemaker in the same?

I think not; I don't remember any such thing.

Did you ever, when negotiating for the rent of that building, have any conversation with Joseph Cain in relation to putting a shoemaker in there? and if so, state that conversation.

I don't remember a word about any such conversation.

Did Mr. Snelgrove move into the building at the same time you did?

I think not.

How long afterwards was it before he moved in?

According to my memory, I think it was between two and four weeks.

Snelgrove rented of you did he not?

Yes.

Before you moved in, had you made any arrangements with Snelgrove in relation to his occupying a portion of the building?

I think not.

Do you remember when you made the arrangement with him? and if so, state the circumstances.

The circumstances were like this: there were some shoemakers across the street, and after we got in then they wanted to convert the building where they were at work. I think they wanted to tear the building down, and a man by the name of Johnson (now dead) came over to see us if there was any chance to get in there with us, and I think in one or two days, if not at that very time, Snelgrove and Johnson came over and made arrangements for each of them a seat in the shop.

Did you ever rent that building to or make any arrangements with any other shoemaker in relation to its occupation?

There were two other shoemakers in there—or, I think about a month the other worked a spell, went away, and returned again.

With whom did they arrange for the occupation of the building?

I think with me, or with me and my partner, Haskinson.

Was this arrangement made before or after you moved into the building?

After, I think.

Was it after Snelgrove and Johnson came there?

Yes.

Was it you, or your partner, who made arrangements with Joseph Cain for the rent?

It was myself, I think.

What was your occupation, and for what did you rent the building?

My occupation was whip making, and we rented for that purpose.

143 When you rented, was it your intention also to engage in shoemaking?

I think not.

Did you move into the building before or after Mrs. Braddock and Mrs. Franklin moved out?

There was no person there when we went in.

Do you remember where John Eddins' house stood?

Yes; I remember something about it.

Was there any fence east of his house, running north and south through the lot on which the building you rented stood?

There was a fence there, and it looks to me it must have been east.

Cross-examined by Richards' counsel:

Did John Eddins live there all the time you occupied that shop?

I don't recollect; he might have moved away.

Can you be positive whether the fence you speak of was there when you first went there?

I think it was.

Are you sure it was on the east side of John Eddins' house?

No, I am not; but think it was.

You say you don't remember of talking with Joseph Cain about putting a shoemaker in there at the time you were negotiating with him for the house. Now, may you not have done so, and in the time which has elapsed, forgotten such conversation?

That is possible; we knew at the time we got the house that we would not need all of it for our purposes, and possibly I thought of it and spoke of letting it out (a part of it) to some one else to help pay the rent, but I don't remember doing so.

Re-examined by Cain's counsel:

When you thought of reletting a portion of the building, had you in your mind a shoemaker any more than you had a tailor or any other mechanic?

I don't remember anything about it.

Was there any fence running east and west between that building and Mr. Cain's house through the lot?

I don't remember that there was; and if there was it is entirely gone from my memory.

DANIEL SHEARER.

Sworn to and subscribed before me, this 3d day of October, A. D. 1872.

D. BOCKHOLT,
Probate Clerk,
Per E. W. EAST, *Dep.*

OCTOBER 10TH—10 a. m.

JOSEPH M. CAIN, being sworn on the part of Cain's heirs, says:

Are you the son of Joseph Cain, deceased?

Yes.

144 You are one of the parties who have filed on lot 6, block 69, plot A, Salt Lake City, now known as the Emporium lot, are you?

Yes.

When were you born?

May 14, 1850.

How many children did your father have, and how many were living at his death?

Only two, and they are still living.

What are their names?

Joseph M. and Elizabeth T.

When was your sister, Elizabeth T. Cain, born?

April 14, 1848.

Is she married; and, if so, to whom?

She is married to Charles Crismon, j'r. She was married June 1, 1871.

Where did your father reside at the date of his death?

On the southeast part of Emporium lot.

How much of the said lot did he own at the date of his death?

He owned the east half of that lot.

Were you present at the death of your father, or with him shortly before he died?

I was with him when he died and talked with him the evening before he died—the same evening.

Will you repeat what he said at that time, if anything, in relation to that lot?

(Objected to as hearsay and irrelevant, by Richards' claimants.)

He said nothing at that time in relation to that lot.

Did you ever hear anything in relation to that lot; if so, when and what did he say?

(Objected to by Richards' counsel as hearsay and irrelevant.)

Three or four days before he died, about supper time in the evening, he was talking with John Balwinkle (D'r France, now dead, was also in the room); he called me up to the bed, holding John by one hand and me with the other; he asked John to watch over me and see that I did not go astray, and see that when we grew up that we should keep the homestead, that he had it fixed so it would never be sold; said he only had a half lot for his children; M'r's Ogden had just commenced to build there then, but would soon move off; that that was not her ground and that she only wanted to live there a little while. He said something to John about repairing a fence, I cannot tell what it was.

How old were you at that time?

About seven years old.

When did your father die?

April 20th, 1857.

145 At the time of your father's death do you remember whether there was any fence west of the homestead, running north and south through the lot?

Yes, there was a fence running north and south through the lot, pretty close to John Eddins' place.

On what side of John Eddins' house was it?

On the east side, as well as I can remember, about fifteen feet from the house.

Can you remember when you first saw that fence there?

I can remember that fence as long as I can remember anything about the lot. That fence was there at my earliest remembrance of the lot.

Do you remember John Eddins living on that lot?

Yes.

At the date of your father's death was there any fence running through the lot, from east to west, between the homestead and M'r Shearer's whip-shop?

No.

Are you positive of that fact?

I am.

Have you had any conversation with William Jennings in relation to this controversy? and, if so, state when and where it occurred.

Yes; I had a conversation with him about a year ago, back of Hague's tin-shop. Charles Crismon, W'm Jennings, and myself, were all that were present. W'm Jennings marked out on the ground the piece of ground he wanted to buy, and wanted me to give him a deed for that Ransohoff building; wanted to know what I would take to give him a deed to the Ransohoff building and a piece of ground which he marked off, and on which he was then building. I told him I had not thought of it yet. He wanted 16 feet east and west, by 25 feet north and south, in the rear of the Ransohoff building. I asked him if he only wanted one rod back, that I claimed two rods back. I asked him what he would give us for our title to that Ransohoff building and all north of that. I marked out upon his plot or drawing, that included ten rods back and up to the Emporium corner, including the same, and asked him what he would give for a clear title to what I marked out. He said all he wanted of us was one quit-claim deed to what he had marked out to me. He said that our title to that above Ransohoff building he would not give a cent for. I told him I had not talked to my mother and sister yet, but would do so and let him know what we would do about it. I told him at the time that I was going to see when he got that corner from me—meaning the Emporium corner.

Was there anything said about a meeting on the subject?

I said we would see him again about it.

146 Did you ever have any other meeting or conversation with him about the matter?

I met him either that day or the next, and he asked me what we had done about it. I told him we had done nothing about it, and made an appointment to meet at our house, and as soon as I left him I saw Charles Crismon and told him what I had done. He said he thought best to have the meeting at Marshall & Carter's office, and so I sent word to him by his son of the change. We met that night at Marshall & Carter's office. Marshall and Jennings done most of the talking. M'r Marshall made the proposition to him to have the heirs perfect his title to the Ransohoff building and what he was building on, which was more than he wanted to buy or which he recognized we had any right. Marshall said he would give him that for $16,000. M'r Jennings said he would not give it, that he thought he would try the Richards title; that that was better than Cain's. Marshall said you had better take us up, if we start we'll beat you. Jennings replied, go ahead and crack your whip, and left the office.

In that conversation, was there any mention made of the Emporium corner, and if so, state what.

During the conversation with Marshall and him, he turned to me and said, how much of that lot do you claim. I told him I claimed just as I told him behind Hague's shop; that I claimed ten by ten rods. Marshall said, that is a half lot, is it not?

Are you acquainted with Joseph Horne, and if so, did you ever converse with him about this matter? And if so state the same, when and where.

I am acquainted with him, and have had two conversations with him in relation to this matter. A little over a year since I went to him and asked him if he knew anything in regard to my father's ownership of that half lot at the time of his death or before. He said no, he did not know anything, but always supposed it belonged to my father. I told him I had looked at the records and found that he and Thomas Rhodes were the appraisers of the estate of D'r Willard Richards, and had appraised a portion of that lot as belonging to his estate. He said he did not think he was. I had a copy of the record and showed it to him. He looked and read it, and said it seems that I was, and said it was so long ago that it had entirely gone out of his mind, and he did not remember anything about it. I gave him to understand what portion I wanted to get at. He said then he did not remember anything about it, but that he kept a journal in early days, and he would look it over when he had time, and there might find something to refresh his memory. During the conversation, he asked who we were likely to have trouble with, and I told him with the heirs of Willard Richards. This was before the conveyance to Brigham Young. About two months ago Charles Crismon wanted me to go and see M'r Horne. We went to M'r Horne's house and did not find him, but on starting away and when upon the street we saw him coming towards his house. We met him on the corner of the street. I asked him if he looked at his journal, and if he found anything to refresh his memory in relation to my father's ownership of the half lot. He said he had looked at it, but could not find anything to throw light on it at all. Charles Crismon then asked him if he could not remember what part he appraised. He said no, he could not remember at all. He then asked him if the piece he appraised might not have been on the west part of the lot. Then I asked if it might not have been the Riley piece. His answer was, it might have been for all he knew the west half or the Riley piece.

147

On the plot you marked on the ground, was the Riley piece on the east or west half of the lot?

On the west half. We had considerable talk, and I tried to refresh his memory, but he could not bring anything to mind.

At the day of his death, had your father a homestead; and, if so, where was it situated?

Yes; the only homestead I ever knew anything about was the east half of lot 6, block 69, plot A.

Did you ever tell M'r Jennings that you never claimed any of that lot north of the Ransohoff property, or did you ever hear any of the other heirs do so?

What I have related here is the substance of all the conversation I ever had with W'm Jennings. I never saw M'r Jennings in our house at all.

Did you ever tell him that he might proceed with his building?

No, sir.

Did you ever hear any one else do so?

No.

Cross-examined by Richards' counsel:

Will you repeat again the conversation had with W'm Jennings in the rear of Hague's shop? And in doing so give the exact language used by the parties, as near as you can.

I was back of Hague's shop, and Charles Crismon and Jennings came back there. Jennings said he wanted to talk with us, and gave us to understand what he wanted. He then drew a plot on the ground.

He asked me then if I would make good, or substantiate, what my mother had done, and what we would take to make him a deed for the sixteen by twenty-five feet, and make good the title to the Ransohoff premises. I asked him then, if he only wanted one rod back. He said, you don't claim further back than that do you? I told him we claimed ten rods back, and I asked him what he would give for our deed
148 to all north of the Ransohoff building. I described this ground, and it run ten rods back (described and marked it out on his plo); the said all he wanted of us was to perfect his title to the Ransohoff property, and sell him the sixteen by twenty-five feet; that he did not care for our title to all above it. I told him I had not talked to the heirs about it, but would do so and see him again and let him know. I told him I was going to see where he got his corner front.

You say this was a little over a year ago; state how much over.

Only a little over two or three weeks.

Was there another meeting arranged at that time with M'r Jennings, at your house?

No.

At what place were you when you arranged the meeting at your house, and who were present?

At some place on the street between Trowbridge's and the Emporium corner; there was no person present.

Which of his sons did you send word by respecting the meeting at Marshall & Carter's office?

I don't know his name. I know him by sight.

Will you state what part of that lot it was that you say M'r Marshall offered M'r Jennings for $16,000?

It was two rods north front by ten rods south, beginning eight rods west of the northeast corner, and to perfect the title to the Ransohoff property.

Was there any price mentioned at the time for the small piece of land which you described as sixteen by twenty-five feet?

There was no other figures talked of at that time.

How do you know your father owned the east half of that lot?

He said he owned it; he improved it, occupied it, and exercised ownership over it the same as those who owned adjoining lots, and I never heard it disputed till just before I was of age.

Did your father die the owner of and in possession of that ten rods square?

He had all except what M'r's Ogden was occupying, and he explained that on his death-bed.

How do you know he was in possession of all of it but that?

Nobody else had any possession of it except M'r Shearer, the whip-maker; and we had lumber and other stuff and used to haul all such to the northeast corner of the lot, near where John Eddins lived.

Do you remember distinctly, and did you fully comprehend the conversation of your father which you have related?

I understood it perfectly, and I have repeated the substance and the words as near as I distinctly remember the substance of his remarks.

149 You were a very precocious child, were you not?

I believe I was a natural child.

Whose land joined yours on the west at the time of your father's death?

Price's, I believe.

Was there any fence at that time between you?

If that lot was ever without a fence back there, it was before my recollection.

How much of that lot are you now in possession of?

I don't know the exact feet; it is what stores No 53 and 55 stand on, and back ten rods.

When, and under what circumstances, did you part with the possession of the other portion of that ten rods square?

There are two pieces on the south five rods, which were sold by the administrator of my father's estate, under what circumstances I cannot tell. The north five rods went out of our possession soon after my father's death. Who took possession of it I know not. Mrs. Ogden was there sometime after my father's death.

Was there ever any conflict of boundary between your father and John Eddins?

Not that I ever heard of.

Was there any between your father during his lifetime, or his heirs or administrator after his death, and W'm Price?

I never knew of any.

Does the land you have filed on include any of the land formerly owned or occupied by W'm Price?

What we have filed on is what I claim he was in peaceable possession of at the time of his death. My father told me just before he died that he owned half a lot, and if it did not extend back ten rods he did not own a half lot.

Your reasoning is good; will you now answer my question?

He did not own it; and the only knowledge I have of his occupying it was his using it as a passage to his stable.

Did your father own any land west of that fence between you and Price?

I don't know. I am not certain when the first fence was torn down. There has been three or four fences put up and torn down. When John Eddins was there he did not own any west of that fence; but at the time of his death I don't know.

Were not there several fences all built on the same line?

No; the last fence is about twelve or thirteen feet east of the old one, or first fence. The first fence was a continuation of a piece of a fence which now stands west of the paint-shop. The piece of fence I refer to is on the Rixton lot.

150 How long did the first fence you mentioned remain?

I don't know when it was removed.

Who moved it?

I don't know.

How do you know it was moved?

I know who moved one fence. There is a piece of fence now standing on the land we claim, that was put up by Wells, Fargo & Company some time in 1865 or 1866.

Where is the piece of fence standing?

About one hundred and fifty feet west of the east line.

Does that piece of fence Wells, Fargo built stand on what was the west side of an alley-way, which was the entrance from the north, and was there in 1865 and 1866?

It was the west side of the alley-way since it was built.

Is this the last of the fences you have mentioned?

It is a piece of the last fence that ever was there.

Are you positive it was east of the first fence?

Yes; the first fence there was a straight one and went about two-thirds through the block.

OCTOBER 11—10 a. m.

Joseph M. Cain's cross-examination continued:

Are you positive that first fence was there at the time John Eddins lived on that lot?

There was a fence there when Eddins lived there, and as early as I can recollect.

At that time did the fence on the same line extend through the Pixton lot?

It continued very nearly through it, if not all the way. It was formerly a pole fence, but is now a board fence.

How do you know there was a pole fence through the Emporium lot, east of Eddins' house, at the time Eddins lived there?

Because I saw it, and the folks used to hang clothes on it.

What folks?

Our folks, and Mrs. Eddins.

When did Eddins leave there?

I do not remember the year, but it was before my father's death.

Do you remember when he went there?

No.

What kind of a fence was there at the time Eddins lived there?

A kind of mixed fence of poles, slabs, and brush, and there might have been a few boards.

Did you hear John Balwinkle's testimony in relation to this fence?

I did not hear the direct, but heard a portion of his cross-examination; but do not remember about this fence.

151 Have you not talked with him about it frequently of late?

I do not remember ever talking to him about this fence till last night.

Are your statements here made wholly from memory, uninfluenced by impressions received from hearing it talked about recently?

They are made from my own memory.

At the time John Eddins left there you were not quite five years old; now, do you mean to say that you can remember that fence previous to that time, and from your memory of it alone you can state it was built of poles, slabs, and some brush mixed in?

The first fence I remember was built of poles, slabs, and brush. My folks had a big black dog, which jumped out of the second story of the Deseret News buildings, and broke his leg, and my father sent for John Eddins, who stood by that fence and shot him.

How far was that fence from John Eddins' house?

About fifteen or twenty feet.

Was there any fence previous to the time Wells, Fargo & Co. built the one, a portion of which is now standing on the same line on which that stands?

It may have been Ben. Holliday, instead of Wells, Fargo & Co., who built that fence. There were three or four fences built there that I remember, during my recollection of the lot; but whether any two of them were built on the same line I do not know, but I do know that the first one and the last which Wells, Fargo & Co. built, was not on the same line. I remember a time, along about 1859, when the Rocky Mountain was there, that fence was almost, if not all, taken away.

Where did the Wells-Fargo piece begin, and how far did it run?

It commenced on First South street, and ran clear across the lot.

Will you give the dimensions of the two pieces of land sold by the administrator of your father's estate off of the south five rods?

There were three pieces sold—one to Groesbeck of sixteen inches front; one to Stringfellow, the dimensions of which I don't know, and one to Charles Ring of twenty-five feet east front and I think eight rods back.

You say the north five rods went out of your possession soon after your father's death; you mean by that, five rods east by ten rods west, do you not?

Yes; I mean all north of the north wall of the Ransohoff building.

Do you know whether the piece sold to Stringfellow extends back ten rods?

I don't know; I think not, for this reason: I heard mother say, I think at the time the piece was sold to King, that she would not sell more than eight rods back, because she wanted room back there for an alley-way.

152 Then, excepting the pieces sold by administrator, and the part north of the Ransohoff building, the heirs of Joseph Cain have always retained possession of the balance of that ten rods square?

Yes, except what that Wells, Fargo's fence encroached on us, and that I claim was twelve or thirteen feet.

How do you know the Wells-Fargo fence was twelve or thirteen east of the first fence that was there?

I knew where the first fence was, and I measured it.

Measured what?

From where the old fence stood to the Wells-Fargo fence.

When did you make that measurement?

The last time I measured it was a few days before this trial commenced.

By what means did you at that time determine the position of the first fence?

By means of my own personal memory.

Was it by that alone?

It was.

Was that first fence removed before the Wells-Fargo fence was built?

It was.

Was it removed before any other one of the three or four fences you have named was built?

I think it was.

It was removed as early as 1860, or before that, was it not?

Yes; before that.

What did you make the measurement you have spoken of with?

With a tape-line.

Do you remember the exact distance from the line of the old fence to Wells, Fargo & Co.'s fence?

No.

What was your object in making the measurement?

My main object was to find the distance between them.

Was not the desire to find the distance between them to ascertain how much of the land you claimed was encroached upon by the Wells-Fargo fence?

No.

Why, then, did you want to find the distance between them?

I don't know. I was measuring with the man who made map, Exhibit B.

At what time was the encroachment on the west side made on your claim?

I don't know the exact time. It was after my father's death.

Was it before or at the time the Wells, Fargo's fence was built?

153 I think it was before; don't know.

By whom was it made?

That I don't know.

At the time it was made, who owned the land adjoining on the west?

I think it was Price; don't know.

At that time who occupied it?

I don't know who occupied it.

Was there any remonstrance made by you, or on your behalf, when it was done?

I made none myself; some of the folks might have made some for all I know.

Did you hear of any being made?

I don't think I did; if I did I've forgotten it.

Was there any talk about it among your folks at the time of it?

I don't know whether there was or not.

Did you hear any?

If I heard any I've forgotten it.

Of whom did Wells, Fargo, or Ben Holliday, as the case may be, get permission to build that fence?

I don't know anything about it.

Immediately after that fence was built who used the premises immediately west of it?

The Overland Mail Company.

Do you know whether the mail company owned the building they occupied there, or of whom they rented, in case they rented?

I don't know anything about it.

Did you make any inquiry about why they were building or had built the fence on your land?

If I did it was of our own folks, but I don't know whether I did or not.

You did not take any interest in the matter at that time at all, did you?

I don't know whether I did or not.

Do you know that Jennings bought a piece of land then from Price?

I only know from hearsay since the trial of the case commenced.

Did you not hear about it near the time of the purchase, about four years ago?

No, sir; I supposed it belonged to Price until Jennings began to build on it.

When was that?

I think it was over a year ago.

154 Where is the east line of that building with reference to the line of the Wells-Fargo fence?

About fourteen feet east of that fence.

By reason of this encroachment you lost possession of a strip of land across the west side of your claim, did you not?

Yes, sir.

When did you recover possession of the portion of that strip directly west of Nos. 53 and 55?

There was no recovery about it; that fence was taken away, and it remains an open space.

You are not in possession of it now, are you?

Yes, as much as this court-house is that ground in the yard.

How did you get the possession of it again?

When that fence was torn down there was a vacant space back there.

Who tore down the fence, or had it done?

I don't know.

Was not a large portion of it, including the posts and nails, taken away about the same time, and that within a year or two?

I don't know; I was not here at the time it was taken away.

How far does that new brick building of W'm Jennings, erected in 1871, extend on your claim from the west side?

About half of it.

Were you twenty-one years old when that building commenced to be built?

I don't think I was.

Did he commence the erection of that building before May 14, 1871?

I think he did, but I was not here.

Did you not become of age before any considerable progress was made on that building?

When I first saw that building it was probably about ten feet above the ground.

When was that?

About June or July, 1871.

Did you ever notify Jennings that he was building on your land?

All the notice he ever got from me is what I have before stated.

This was some time after you first saw the building, was it not?

Not very long; it was the first time I had seen Jennings.

How far had the building advanced then?

It was up about ten or twelve feet; Jennings had stopped work on it at that time.

Was no part of it up more than twelve feet at that time?

I think not; if it was it was the west wall.

Did you go to see Jennings, or did he come to see you?

155 At the time we met, he came to see me. When I first talked with Marshall, he told me to go and tell Jennings. I went twice to see him, but could not find him.

How long was this before the interview you had with him?

Not more than a day or two.

Did you ever authorize any one else to notify him that he was building on your land?

No, sir.

When you first learned that he was building that house, did you notify him promptly that he was building on your land, or try to do so?

When I first saw that house he had already been notified by Samuel Richasds, and had quit work on it.

What notice did Samuel *D*ichards give him?

Samuel Richards told me he told Jennings that he was building on a portion of the ground belonging to the estate of Joseph Cain.

What was the extent of the piece of ground of which such notice was given?

I do not know.

Did you not know at the time that the piece Samuel Richards had referred to was the small square you have referred to in rear of the Ransohoff building?

No, sir.

At what other time than the one you named did you measure the distance between where the first fence and the Wells Fargo fence stood?

Shortly after I first saw the building. These are the only times I ever measured it.

Don't you know that the land claimed and occupied by William Price extended as far east as the Wells Fargo fence?

I never heard him claim an inch of that lot.

You knew that he was the reputed owner of a portion of that lot at one time, did you not?

Yes.

Don't you know the piece so called extended as far east as the Wells Fargo fence?

It was all in one piece, and called the Price property, but I don't know that his ownership extended over all of it.

Don't you know that the piece of land he sold to Jennings came up to that fence?

I think it did, but I never gave a deed to it.

During the time Price owned land there was the portion next to the Wells Fargo fence claimed?

I claimed a half lot there.

To whom did you make known that you claimed that?

156 I don't know that I took any person there and showed the piece of ground, but in talking to any person about it I told them that I owned the half lot. About the only description I gave of it was that I claimed ten rods square on each street. I consulted counsel several times, and I was instructed to keep quiet until I became of age.

Did you ever tell Price that you claimed land west of that fence?

No.

Did you ever tell your mother or sister?

No.

Did your mother or sister, or either of them, pretend to claim land west of that fence?

Yes; mother did.

When?

Before this suit commenced she located that fence, and said they claimed to that.

How long was that before this suit commenced?

It was since the 7th day of July, 1872. She has always said we owned a half lot there; after the move in 1858 or 1859 I heard her claim a half lot there. It came up thus: some small boys and I were playing ball against a shop Jennings had then; the ball jarred the house, and would knock something down that was hanging up inside, and a fellow he had there sent me home. I told mother about it, and asked if that wasn't our ground over there. She said it used to belong to us, but that the President had got it, or taken it, and it was all right. I asked her how much ground we used to own there. She said we used to have half a lot, but we only had a quarter now.

During the time the Wells Fargo fence stood there, did you ever tell any one you owned land west of it?

No person but Marshall.

Was this silence according to the legal advice you had?

Had it not been for this I would likely have said more about it.

How do you know your father did not own any land west of the fence which was there first?

Because he told me he only owned a half lot, and that fence was ten rods back.

How long was it before you was of age that you first heard it disputed that your father owned half of that lot, and who was it that disputed it?

It was just before, or just after; it would not vary a month either way. Heber John Richards was the first one who I heard dispute it, and he disputed our title to all of it, and he made a proposition if I

would give him a hundred dollars a foot front he would give me his deed to the ground which 53 and 55 stand on. I again saw him, and he made the same proposition, with this provision: that I would either
157 make Brigham Young secure or redeem a mortgage given by my mother and Samuel Richards.

When and where did this conversation occur?

It was at our house, and after I became of age.

OCTOBER 14TH—10 a. m.

Cross-examination of Joseph M. Cain continued.

Did you ever measure the distance from the east line of lot 6, block 69, to the Wells-Fargo fence?

I never did directly; did indirectly.

State the manner in which you made that measurement, and the distance it was.

About the commencement of this case it was found necessary by our attorneys to have a plot made of that half-lot, and they instructed me to get a surveyor and have him measure it and make a plot. I did so, and went with him, and the first thing we done was to measure the line back from Main street ten rods, and placed a monument of half a dozen rocks. We measured from a dozen or more different points. During that measurement I measured the distance from this monument of rocks to the Wells-Fargo fence. It is ten rods to the Wells-Fargo fence, less some twelve or thirteen feet. The exact distance I don't know.

Will you again repeat the language of you' father when he told you how much land he owned there?

He had been talking with John Bolwinkle some minutes before, and he called me up to his bed, and took us, John and me, each by the hand, and asked John to watch over me and see that I did not go astray, and told John he had his homestead fixed so it should never be sold; seemed to feel bad when he said he only had a half-lot to leave his children, but said he thought it would be sufficient for a homestead for us. There was no person in the room but John Bolwinkle, D'r France, and myself.

Have you given his exact language as to his saying he only had half a lot to leave his children?

That's the substance and the exact language, as near as I can remember.

Did he designate the half-lot as the east half of the lot he was then living on?

No, sir.

In using the term half-lot, do you know that he had in his mind the half of an acre and a quarter lot, or do you merely suppose so?

I had no more idea what he had in his mind than I have of what is in your mind now; but he undoubtedly knew how much was in a city lot. On reflection, I now remember he said M'r's Ogden would soon move off
158 of the half-lot to which he referred.

How do you know he meant the east half of that lot by the language you have repeated?

Because he referred to it as his homestead, and he never had any other that I know of, and he occupied a greater portion as such.

When did M'r's Ogden build her house on this lot?

I don't know when she commenced nor when she finished it. She was very slow about it; some two or three years from the commencement to the completion of it.

How long did she live there?

She lived there before and after it was finished, but I don't know how long she lived there.

If you don't know when she commenced to build there, why did you say she had just commenced to build there at the time you had the conversation with your father?

If you had asked me whether it was before or after my father's death, I could have told you it was before. At that time her house was in process of erection, but was not completed.

Did she live there then?

I don't know. If she did, she lived in the cellar. She covered the cellar with boards and slabs for some time before the first story was finished.

M'r's Ogden built her house there and went there to live in the autumn of 1854, did she not?

No; I think not.

What year did she, then?

I don't remember, but think it was in 1856. The only way I can come at that is, it was not finished at the time of the move in 1858 until we returned from the move.

Did she live there after the return from the move; and if so, how long?

She did; but I don't know how long.

Did you hear M'r's Ogden testify in this case?

I heard a portion of it.

Did you hear her state that she built her house there in 1854?

No, sir.

If she did make that statement she was incorrect as to time, was she?

Yes; I think she was if she so stated.

You are relying on your own memory in this as in other portions of your testimony, are you?

Yes, sir; that's all.

In the conversation at Hague's shop, did Jennings make you any offer for the small piece of ground in the rear of the Ransohoff building which you have described as being sixteen by twenty-five feet?

159 Jennings never made me an offer at all.

Did he not at that time offer you the sum of five or six hundred dollars for that piece of land?

He did not.

Did you at that time ask Jennings what he would give you for the Callahan property and that small piece?

No sir.

Was there anything said at that time about his purchasing the Callahan property at all?

He said nothing about it to me; he might have said something to Charley.

Did you not hear all of the conversation?

Charley and Jennings were together and were talking when I first saw them.

You heard all the talk after they came back to the rear of the shop where you were?

Yes, unless it might have been a few words said just as they were leaving.

Was the purchase of the Callahan property by Jennings discussed at Marshall & Carter's office at the interview which took place there?

It is my impression it was not.

At that time were there any money figures mentioned in connection

with the proposed purchase of the small piece of ground in rear of Ransohoff building, before mentioned?

None for that piece alone.

At that time was not this proposition made, viz: Jennings stated he wished to get a deed from the heirs of Joseph Cain to the Ransohoff property and that small piece in the rear of it, and that he would buy the Callahan property, Marshall replying that he (Jennings) might have all those properties for the sum of seventeen or nineteen thousand dollars?

To a great extent such a proposition was made, but if it included the Callahan property I did not know it, and neither the sum of seventeen or nineteen thousand dollars were mentioned; sixteen thousand dollars was the sum mentioned.

If the Callahan property had been included in such a proposition, would you not have known it?

I think I should.

You and M'r Crismon were in Marshall & Carter's office at the same time, were you not?

No; Charley was there both before and after I left.

Was Jennings there at the time you got there?

No, sir.

Which left first, you or him?

160 I went out of their private office into their front office first, and left Jennings there, and was there perhaps five minutes when Jennings passed through and went out.

The interview was about terminating, then, when you left the private office, was it?

It was so far as that proposition was concerned.

Was the front office adjoining the office you were in?

They were connected by a door.

Was that door open when you were in the front room, and until Jennings passed out?

No; that door was shut.

Did not that interview terminate with some rather excited talk between M'r Marshall and M'r Jennings, especially on the part of M'r Jennings?

M'r Jennings talked excitedly just before I left the room.

Had not the interview between the parties on the business for which you met there concluded when you left the private office?

It was so far as I was concerned, and don't know what occurred with the others.

The statement then of M'r Marshall in his testimony in this case, that the money figures mentioned in that conversation was in connection with the purchase of that small piece of ground in the rear of the Ransohoff building, was false, was it?

I don't know whether it was or not. I was not present all the time that M'r Jennings and M'r Marshall were in conversation.

Is it true that that was the only money figures mentioned at that time?

That $16,000 before referred to was mentioned, and that was the only money figures mentioned.

Do you remember the day of the week that that interview occurred?

I don't know what day it was.

Did you have any talk subsequent to that on that subject or on the subject of the sale of the Callahan property?

No.

Had you any further talk with him at all in relation to the Eagle Emporium corner property?

I have had no conversation with M'r Jennings, except what I have related.

Then your only conversations with him on this subject were three; first, the one at Hague's; second, the one on the street above Trowbridge's; third, the one at Marshall & Carter's office?

They were all.

161 Previous to the one at Hague's, did you not have a brief conversation on this subject with M'r Jennings at Samuel Richards' office?

M'r Jennings and I never met in the world at Samuel Richards' office.

Previous to seeing him at Hague's, did not M'r Jennings at one time meet you at or near the corner west of Samuel Richards' office in his buggy, when he got out and let his son take the lines, and he walked eastward with you toward Main street, at which time he and you engaged in conversation about the property in dispute, and did you not then tell him that you claimed none of that lot north of the Ransohoff building and west of the alley-way?

I never met M'r Jennings when he got out of his buggy and walked east towards Main street, nor did I ever tell him that I claimed no land north of the Ransohoff building and west of the alley-way.

Did you not during these interviews come to an agreement with Jennings for the sale of the Callahan property and a small piece of ground in the rear of the Ransohoff building?

No.

In the evening of the interview at Marshall & Carter's office, and after that, did you not see Samuel Richards, and authorize him to see Jennings, or consented for him to see Jennings, and state to him that, upon a reconsideration of the matter, you had decided to let him have the Callahan property upon terms which you had mutually understood before the meeting at Marshall & Carter's?

No, sir.

Don't *you* know that Samuel Richards went to M'r Jennings late that evening with the message mentioned?

I don't think he did; I knew nothing of it.

Did you hear from any one about that time of his having done so?

I think not. I never heard of his going to see M'r Jennings except on the occasion when he notified him he was building on land belonging to the estate of Joseph Cain.

Did you not on the following day after this interview, which was a Sunday, or one of the days of the October conference, 1871, meet M'r Jennings at or near the Tabernacle gate and walk with him down the street west to the corner, and did you not state to him that you had reconsidered the matter since the interview at Marshall & Carter's, and that you would let him have the Callahan property and the small piece in rear of the Ransohoff building on the terms previously understood, that you would sign the deed for the same the following day, and that your sister, who was north, at Shirtliffe's, would sign it as soon as she came home, or did you not *made* statements to him to that effect?

I met M'r Jennings at the corner during one of the days of the October conference, and he never walked with me nor I with him, and
162 our conversation lasted about four seconds. Either my mother or sister, or some one at our house, told me M'r Jennings had been there and sent his son there and made this proposition: that if we would

sell him that small piece of ground and the Callahan property, and perfect his title to the Ransohoff property, he would redeem a mortgage in favor of and in the hands of Brigham Young; that he would come down to the house at noon for an answer. It was a rainy, cold, disagreeable day. When conference adjourned at noon, I came out at the west gate and M'r Jennings came out at the south gate, and we met right at the corner. When I saw him I thought I would speak to him; it would save a walk. I said to him, "M'r Jennings, you can't have that property on these terms." He said, "Very good," and went on, saying nothing more.

Now that your memory is reviving, won't you tax it and see if you can't remember some other of the conversation about which I have enquired?

I have related the substance of all the conversations I ever had with Jennings on the subject, and had forgotten this last until my attention was called to it.

You have stated that at Hague's you never asked Jennings what he would give you for the Callahan property and the small piece of ground sixteen by twenty-five feet, and that for the latter piece he never made you the offer of five or six hundred dollars, or any other sum; that the statement of Charles Crismon that such was the case is false, is it?

If he made that to Charley Crismon, I did not hear it; he never made it to me. They had some conversation when I was not present.

Re-examined by Cain's counsel:

How long previous to the meeting at Marshall & Carter's had you employed them as attorneys in relation to the east half of the Emporium lot?

They were employed three or four months before I came of age.

In measuring for the purpose of making the plot to which you have referred, did you measure the distance from the east line of that half lot to the line of the original west fence you have spoken of? And if so, state the distance.

Yes; it was 165 feet, or ten rods.

J. M. CAIN.

Subscribed and sworn to before me this 14th day of October, A. D. 1872.

D. BOCKHOLT, *Probate Clerk*,
Per E. W. EAST, *Dep.*

M'r's ELIZABETH RICHARDS, being duly sworn on the part of Cain's heirs, says:

You were the wife of Joseph Cain at the time of his death, were you not?

163 (Objected to by Richards' counsel on the ground of witness not being competent to testify, she having been the wife of Joseph Cain, deceased.)

I was.

How many children had he alive at his decease, and what were their names?

Two; Elizabeth T. Cain and Joseph M. Cain.

State their ages, respectively, at present.

Elizabeth T. was born April 14th, 1848, and Joseph M. was born May 14th, 1850.

Where did your husband reside at the date of his death?

At his residence on Main street, in Salt Lake City, on what is now known as the Emporium lot.

Had he a homestead?

Yes.

Where was it?

It was on the east half of the Emporium lot.

Had Mr. Cain any other residence besides this, at the time of his death?

No, sir.

Did his family also reside with him on that half lot, and were they there at the date of his death?

Yes.

When did Mr. Cain and family first move onto that lot?

In 1851, as near as I can recollect, in August.

OCTOBER 15TH—10 a. m.

Examination of Mrs. E. Richards, continued.

Into what kind of a house did you move?

Into a small adobe house.

Where on the Emporium lot was it situated?

It was situated north of the Ransohoff property, a few rods from the north and east lines.

At the time you moved onto said lot, were there any other houses or buildings on that lot besides the little adobe house in which you moved? And if so, state what other buildings.

There was a stable situated on and near the northwest corner of the half lot.

Of what were they composed?

Logs.

How many were there?

As near as I can recollect, two.

164 Besides these stables and the adobe building into which you moved, were there any other buildings when you moved there?

No.

At the time you moved there were there any buildings or the foundation and walls of any buildings near to where your bake-oven was afterwards built?

For several months before we moved up there we had men hauling rock, sand, and clay. I think a foundation had been dug out for a large bake-house and oven. When we moved there seemed to be a large pile of building material there.

Do you know anything about the building of that bake-house and oven? And if so, state it.

There was a young man by the name of George Givins in destitute circumstances lived with us in the winter of 1850 and spring of 1851, a baker by trade. He wished to go into business, and Mr. Cain told him he would let him have the place to put a bake-house and oven on. He was a stranger who had no means when he came here; had been in the church some time. As far as his health would allow him, he was hauling material during the spring and summer for building this place. Mr. Cain hired a team for him. Some time in September of 1851 he broke a blood-vessel. He was confined to his bed over two months, during which time I nursed and took care of him in the little adobe house in which we had moved. He died and was buried on our lot in the seventh ward. I think at this time the foundation of said bake-house was dug,

but don't know whether there was any rock-work done or not. Mr. Cain had had an applicant for such a place, and, as far as I recollect, he went on with the building and completed it.

When you first moved on that half lot was it your intention to build a dwelling-house down by that bake-house?

The bake-house was intended for business; I don't think it was.

Do you know the reason which caused it to be built there? If so, state them.

After George Givins' death the programme was changed; there was a little more expense in connection with a house which Mr. Cain built in addition to the bake-house as a salt-room. The object was to save expense, as by building there it would save a wall.

At the time you moved there were there any fences on that half lot?

There was a pole-fence on the east and north sides made by the ward.

At that time was there any fence running through the lot near the centre or west line of the half lot from north to south back of the little adobe house?

No, sir.

165 Did you remain so until your husband's death?

No.

When was there a change made?

I can't remember the exact time; as far as I recollect, at the time we had several men at work on our building; it was in an early day, I should think along about the summer and fall of 1852. Dr. Richards and Mr. Cain were together a great deal; they would very frequently walk over the lot and around the building. One time in particular Mr. Cain and the doctor were walking up and down, they were trying to get the line as he wished to put up a fence as quick as possible; after they got the line with which they were satisfied, Mr. Cain had stakes drove down; I don't know how long afterwards it was that the fence was put up, but it was commenced shortly afterwards; it ran north and south, commenced on the north line of the lot; ran through the lot.

Do you know by whom that fence was built?

By some of the carpenters we had employed.

At whose instance?

Mr. Cain's.

How far back from East Temple street was that fence?

It was intended, as I understood, to be placed in the centre of the lot

Was it placed there?

Yes; satisfactory to Dr. Richards and Mr. Cain.

How long did it remain there?

As far as I can recollect till the year 1858 or 1859. I left my home in 1858 and went south with the move and returned during the summer. I rented my property to a person at a high figure, and while he was there he burnt my stables that Mr. Cain put up, and the slab fences and logs that were on the lot.

Did he burn up the west fence of which you have spoken, running north and south through the lot?

Yes. I can't say he burnt every stick.

Was this fence ever standing while John Eddins lived on the west half of lot 6, block 69, plot "A"?

Yes, sir.

How do you know it was?

We used to hang our clothes on it.

How far was it from John Eddins' house?

I can't tell exactly, but it seems to me that it was very close. It seems to me there was a foundation put up in front of his little house.

What side of his house was his fence?

On the east side.

Did you visit John Eddins' house frequently?

No, sir.

166 How long did Mr. Cain and his family reside on the east half of the Emporium lot?

From the time we moved there, in 1851, to the time of his death, in 1857.

How much of that lot did he occupy up to the time of his death?

We occupied to the west fence, to the north fence, and to the east fence and south.

Where was the south fence?

It divided Mr. Pixton's lot and ours.

How much did your husband own there?

He owned inside of the fence I have mentioned, which is a half lot.

State how you know that he owned within these boundaries.

After Mr. Cain returned from California, and I might state before, there were business transactions between Dr. Richards and Mr. Cain; immediately after he returned, he went to see Dr. Richards. He said, "I am going to let the doctor have what money I brought with me." The doctor told him he wanted to use the money about a canyon road and mill. My husband was with him more or less that winter. During the winter he remarked the doctor said to him he wished to have him near him. At different times this conversation was repeated. The doctor called at our house, and passing around our lot he came in. Mr. Cain was at home; he said "Brother Cain," or "Joseph, what are you going to do with your lot?" Mr. Cain told him he had had a foundation dug, and was going to build a house, remarking on the beautiful situation. The doctor said to him "I don't want you to build there, Joseph; I want you to build near me," saying, "I have a lot, Joseph, that you may have." The idea was that if he would not build there that he would give us a lot to build on near to him.

Did the doctor mention the particular lot?

No, sir; I think not.

How long was the conversation you have just related before the time you moved on the Emporium lot?

As near as I can recollect, this conversation occurred in the spring, and we moved in the summer following.

Did you ever hear Dr. Richards say anything further on the subject of your moving near to him? If so, state it.

Quite a number of times after that conversation occurred Dr. Richards asked me if I was ready to move. I replied I preferred not to do so. I think, if I recollect right, the doctor remarked, "Come up and try it awhile," and if I did not like it I could return back.

Do you know what arrangement, if any, with Dr. Richards you moved on the Emporium lot? If you know state it in full.

Dr. Richards gave Mr. Cain a lot to live on and build upon. He wished to have him near him.

167 Do you know what lot he gave him?

The lot known now as the Emporium lot.

Did he give your husband a full lot?

No.

How much did he give him?

A half a lot.

State your means of knowing that fact.

A conversation came up with Mr. Cain. I don't know who with, that the other half of that lot was going to be divided up; that John Eddins was going to have a lot next ours.

After you moved onto that lot did you ever have any conversation with Dr. Richards in relation to that lot, and if so, what?

The first time after we came there he asked me how I liked the place. I told him I did not like it; there was nothing green. He was down often in the yard, and when we were building the bake-oven, he always seemed to feel well and quite interested in our welfare.

Did you ever hear the doctor, or any one else, lay any claim to that half lot except your husband while he was living?

No, sir. I will explain. Sometimes my husband came in and seemed to be very much put out, and remarked something like this: That President Young had sent word to him to measure off a certain portion of that half lot to Mrs. Ogden, indicating that he considered it an encroachment of his rights.

At the date of Mr. Cain's death how much ground did he own of the Emporium lot, and how much was he in possession of?

I never knew of his giving up any claims to that half lot. He was a man that done as he was told, and did not question anything that President Young or Dr. Richards done. I controlled five rods. My husband claimed half of the lot he occupied, as near as I recollect the half lot. There was a variety of materials on the half lot; one was a very large wood pile that was on the northwest corner. This we used for our own private use, and the wood used in the bake-house was on the south part. My husband was buying lumber and logs, and they were stored in various places over that half lot, and there was some loads of machinery there.

After your husband's death, did you continue for any time to occupy, as he had done before his death, that half lot?

We had an exciting time. We understood that an army was coming out here, and in the spring following we moved and left everything. The understanding was that the president controlled that lot north of Mrs. Ogden's.

When was that first understood?

I don't know; I can't tell.

When did you first hear of it?

168 I cannot tell. We were all individually subject to the will of our leader; those of us who wished to live our religion. The president told Mrs. Ogden that she could have a piece there.

Did you ever investigate or inquire how the ground north of the five rods spoken of passed out of your control?

No, sir.

Do you know how it came to pass out?

No, sir.

Why did you not enquire into it?

I got the idea that the five rods south of Mrs. Ogden's house was mine, and the other was President Young's.

What gave you this idea?

I would have taken the word of our leaders in those days as readily as I would an angel. President Young claimed it, and I never questioned it. No person in those days questioned our leader's transactions.

At the date of your husband's death, was there any fence between Mr. Shearer's whip-shop and your residence, running east and west, through the lot?

No, sir.
Are you positive of that fact?
I am.
After the first fence on the west side of that lot was taken away, was there any other one built in its place, or near to it?
I can't say, as my property was rented.

Cross-examined by Richards' counsel:

How many rooms were there in the small house you first moved into on that lot?
Only one.
Was there any upstairs to it?
No.
How long did you live in that little house?
I can't say whether a year and a half or two years.
Had you any intention, at any time, of building a house on a different portion of the lot than that you did build on?
As I stated, my husband, on account that his programme was changed——
From what was it changed?
Our private dwelling was added to the bakery.
Do you know Mr. Cain had intended, before the death of the young man spoken of, to build a residence on a different part of the lot?
Yes, sir.
Where did he design building it?
He did not name any place.
How do you know, then, he had such intention?
169 I should judge from remarks.
What were those remarks?
The substance was the young man intended to take charge of that business himself, my husband being interested in it, that we would have a house independent of the other business.
Can you tell what year it was you moved into your new house?
I cannot be positive.
Give it as near as you can.
It was either in 1852 or 1853.
How do you know it was in 1851 you moved on that lot?
My son was born in 1850, and we moved the year following.
When did M'r Cain return from California?
In the fall of 1850.
How long was he there?
One year.
He and D'r Richards were engaged in business in some way jointly, before M'r Cain went to California, were they not?
I cannot say about the business; they were very intimate.
Was not M'r Cain's trip to California an enterprise in which D'r Richards was interested?
I do not know.
Did not D'r Richards fit out M'r Cain for the trip, or assist in doing so?
I could not say; D'r Richards spoke to M'r Cain about it.
How did your husband go on that trip?
He went with others, on pack animals.
Did you not understand from M'r Cain that D'r Richards was assisting him to go, and that they were to divide the proceeds between them in some way?

I do not know; there was some arrangement, but I do not know what it was.

What was the object of M'r Cain's trip to California?

Exploring the country.

For what purpose?

I could not say.

What use did M'r Cain make of the little house after you moved out of it?

We used it as a kind of out-house; hired men we had slept in it.

Did not one or more of D'r Richards' wives live in it after you moved out?

Yes, sir.

In what year did they go there, and when did they move away?

I could not say when they came there, or when they moved out.

By whose permission did they come there?

170 I was quite familiar with the facts and circumstances at the time; the matter was understood between M'r Cain and D'r Richards. The first idea I got of the matter was that a daughter of M'r's Braddock had come in from the States, and, as I understood, was going to remain some few months, and wished to reside with her mother, and from remarks I heard it was like this: The doctor had not sufficient room in his own house. I do not know whether it was the same fall, an old lady came in from England, who he expected to be a member of his family; as far as I can recollect, the doctor spoke to M'r Cain in relation to the matter.

OCTOBER 16—10 a. m.

Examination of M'r's Elizabeth Richards continued.

You say as far as you can judge or remember, the matter of M'r's Braddock moving into the little house was understood between M'r Cain and D'r Richards. Do you mean that M'r Cain's permission for her to move there was obtained by D'r Richards?

As far as I know, M'r Cain would have contributed to the welfare and interest of the doctor's family; would not have withheld anything from the doctor. I mean that M'r Cain's permission was obtained by D'r Richards.

Do you actually remember that such permission was obtained?

I was not present, sir.

Then, personally, you don't know whether it was or not, do you?

I know that no person went into that house without M'r Cain's sanction.

How do you know that?

Because no one ever did.

How do you know no one ever did?

Because M'r Cain owned and controlled that house.

How do you know he owned it?

In various ways, sir.

Will you state all the various ways and circumstances by which you knew that M'r Cain owned that lot, fully and particularly?

First, from of truth; before we moved there I heard D'r Richards say he would give him a lot to build on if he would go up there; as a man of truth he done so. My husband moved upon the lot and lived upon it peaceably and happily during the doctor's life-time. Some time after we moved there, in conversation with some one, don't remember who, I heard M'r Cain say he had paid for that lot. The doctor asked me how

I liked to live there after we got into our new house. I told him I had learned to like it; at the time I was more or less familiar with the circumstances. I saw M'r Cain and D'r Richards once measuring to
171 get the division line between ours and Eddins' place; they walked up and down measuring. When M'r Cain came in to dinner, he and the doctor said they wanted to get the centre line of that lot, and they had drove stakes down, as the doctor was going to divide the west half for the doctor's son. There were stakes placed on the line where M'r Cain and the doctor agreed upon; the doctor always had a stake, and held to that till the post was down.

When was this that you saw them measuring?

I think it was in the spring of 1852.

With what were they measuring?

I cannot state.

Along what portion of the lot were they measuring?

From north to south.

Was it west of your house, and between it and Eddins'.

Yes.

Were you living in your new house at that time?

No.

Did D'r Richards come in with M'r Cain to dinner?

I could not be positive about that; he came in very frequently.

Did they measure any other line on the lot at that time?

Not that I recollect.

Do you remember that they measured from or to Main street along the north or south line of the lot?

I don't recollect.

Did you hear any conversation at that time between M'r Cain and D'r Richards?

I might have, but don't recollect.

Who told you they were measuring to get the center of the lot?

I have frequently heard them talk about it half a dozen times or more.

Do you know, and did you then know, that they were making that measurement to get the center of the lot?

Yes.

How did you know it?

I heard M'r Cain and D'r Richards talk about the matter frequently.

State the times and place you heard some one of these talks?

In the lot and in the house.

When, before or after the measurement?

Both before and after, I should say.

Repeat these conversations.

I could not do so. The sum and substance was to get the fence on the line.

The measurement was before the west fence was built, I understand you?

172 Yes, sir.

Did you ever hear D'r Richards say what lot he would give M'r Cain?

Yes, sir; the lot we moved on.

Where did he say this, and when?

He said it in the seventh ward.

On what occasion?

I don't think I can tell.

Was it at the time you have mentioned that D'r Richards noticed the digging in M'r Cain's lot and enquired what he was going to do?

That is one of the times I have mentioned.

By what words did D'r Richards designate the lot so that you knew it was the lot you moved on?

The first time I knew what particular lot it was, was when we moved on it, and it was known as our lot.

Did you ever hear D'r Richards say how much land he would give, or had given, M'r Cain there?

Yes, sir.

When?

I could not say, it is so long since.

Was it before or after you moved from the seventh ward?

I could not say, sir.

Then it may have been before you moved from the seventh ward?

The first time I heard him say he would give M'r Cain a lot I thought of nothing but a lot the same size of the one he had. I heard M'r Cain say the doctor wanted the other half for John Eddins, and Mr. Cain said the half lot would do us.

Then Mr. Cain understood in the first place that the doctor gave him a full lot, did he?

That was my understanding; I don't know what was the understanding between him and the doctor.

Who occupied the little adobe house after M'r's Braddock and M'r's Franklin left?

M'r Shearer and Snelgrove, if I recollect right.

Did they come there before or after the death of D'r Richards?

I cannot say positively; I think M'r's Braddock lived there at the time of his death, but am not certain.

Of whom did M'r Shearer rent that building?

Of M'r Cain.

How do you know that fact?

Because he could not have got into the house under any other circumstances.

Did you hear the bargain made for the house by M'r Shearer?

No, sir.

173 Did M'r Shearer ever tell you he got it from M'r Cain?

I don't think he did. He might have done so.

Now, do you know of your own personal knowledge or do you merely suppose he got it from M'r Cain?

I only know this, that he could not have got it there only through or by M'r Cain.

You are one of the parties who have filed on the property in dispute, are you not?

Yes, sir.

What is the extent of the land you have filed on?

On the east half of that lot.

How much do you really claim you are entitled to?

To what we have filed on.

How far was the original west fence from the east line of that lot?

I can't say.

For some time previous to a year or so ago there was an alley-way on the west part of that half lot running down south from the north street, was there not?

Yes.

When was that road or alley-way closed?

I think when M'r Jennings put his east building on it, which was in 1871.

When did John Eddins move away from that lot?

I don't remember, but I think it was during M'r Cain's lifetime.

Was there any conflict or dispute between M'r Cain and John Eddins about the boundary between them while Eddins lived there?

I don't know.

You did not hear of any, did you?

Not that I remember of.

If you had heard that there was a conflict about the boundary, don't you think you would have remembered it?

I don't know; I might or might not have forgotten it.

Who succeeded John Eddins in the ownership and occupation of that piece of ground?

M'r Price.

He came there before M'r Cain died, did he not?

I think so.

Can you not be positive?

Yes; I think he did, but not very long before.

Was there ever any conflict of boundary between you and him?

I do not recollect.

M'r Price never encroached upon or occupied any of your ground while he lived there, did he?

It seems to me there was an encroachment.

174 Was there in fact any?

Yes; it was after my husband's death, if I recollect right, something like this, the cows being drove into my lot to get to their's. I could not say whether it was M'r Price or his renters. I was much annoyed about cows and other animals.

Was there any other encroachment or occupation than what you have mentioned?

I cannot say; they had renters, and I had renters, and they took the liberty to pull down fences and build fences.

Price's land came up to the fence on the west side of the alley-way, did it not?

That would depend on where the fence was put. In those days we expected to leave the country.

Do you know whether any one ever did move that fence and build another in a different place?

I know there was another fence built, but whether in a different place or not, I cannot say.

Did you not always understand and consider the fence on the west side of that alley-way the boundary-line between you and Price?

I considered it the line where the fence was first put up. I was absent and did not live on the lot for four or five years.

What fence do you mean?

The west fence.

Will you give the years you lived there after M'r Cain's death, and when you left there?

I left the year after M'r Cain's death, in 1850, and went south two or three months. I returned to the homestead and remained there some three months, then rented it and went away. In about five years I returned and lived there three, four, or five years more, since which time I have not lived there.

Was not the good fence put up by Wells, Fargo & Co. built before you left the last time?

Yes, sir.

That fence constituted the west side of the alley-way, did it not?

Yes, sir.

You considered and understood that fence the west boundary of your land when you last lived on the premises, did you not?

I did not consider the matter at all, only I was glad to see a good fence put up there.

M'r Price considered that fence the line between you, did he not?

I don't know.

He or his renters always occupied the ground west of the fence, did they not?

Yes; so that did not trouble me, I did not care.

175 When he sold out there, he sold up to that fence, did he not?

I do not know anything about it.

You did not consider you had any interest in or concern about the land on the west side of that fence, did you?

No, sir. I supposed it to be another person's land on the other side of the fence.

You have sold some portions of that land since Mr. Cain's death, have you not?

Yes, sir.

What pieces did you sell, and what did you get for them respectively?

The first piece I sold Mr. King, now known as the Ransohoff property; can't give the price without referring to the deed. It was sold in 1855 or 1856. I sold a strip, I think, of sixteen inches to Mr. Groesbeck not far from the time I sold the other piece, and I think for $60 or $75. The next piece was to Stringfellow. I cant tell the amount of feet. The price received was, I think, $2,500, but I am not sure.

In selling these pieces of land, you received a consideration that satisfied you, did you not?

Yes, sir.

Have you repurchased all or either of those pieces sold?

No, sir.

Do you claim that you are still entitled to this land you have sold, and as you say you have received pay for?

When I sell a thing I don't expect to get pay for it twice.

In selling these pieces of land, did you sell clear across to the west side of the lot?

No, sir.

How much did you retain, and for what purpose?

I cannot exactly tell the amount. I did not want to sell clear back to the fence, and the parties were satisfied with what they got.

Was not the chief object to retain the strip constituting that roadway for the purpose of access to the rear of your remaining building?

Yes, sir.

OCTOBER 17TH—10 a. m.

Examination of Mrs. Elizabeth Richards continued:

As long as that alley-way remained did you not always consider the fence on the west side of it the western boundary of the land you owned?

The fact of the matter is, I considered I owned back what would be called a half lot. I never ordered the fence built nor pulled down.

Please answer my question. Did you not always consider that fence your west line?

176 When the first fence was put there I always considered it my west line.

Did you not consider the fence which formed the west side of that alley-way your west line?

I never considered anything about it.

Don't you know that that Wells, Fargo fence was on the east line of a piece of land owned and occupied by John Eddins, and afterwards by Wm. Price, and that you never did and do not now own a foot of land west of where that fence stood?

The fence was put there long after John Eddins left.

Have you not always been in the habit, until a very recent period, whenever you had occasion to speak of your western boundary, to do so by reference to that fence, or the west side of that alley-way?

I had an agent to attend to those matters.

Who was that agent?

Samuel W. Richards.

Did he not consider that fence the west side of your premises?

I don't know what he considered.

Have you not told persons that you owned no land west of that alley-way?

I don't know; I can't recollect.

Do you know that you have not done so?

I could not say what I have said, or what I have not said in the matter.

Did you not tell Wm. Jennings so not far from a year ago, at your residence?

Mr. Jennings called at my house several times, and there were several conversations; there were conversations about different matters. He had stopped his new building when he came to see me.

For what had he stopped it?

He was told he was building on a piece of land that had not been sold to him.

Did you converse with him about that piece of land?

Some little.

Where was that piece of land and what size was it?

It was a piece at the end of the Ransohoff building; I can't say as to the size; the subject was he wanted to purchase it.

It was what had been a portion of the alley-way, west of the Ransohoff building, that he was building on, was it not?

Yes.

There was no further claim made by you to the ground he was building on, except the little piece, was there?

There was nothing said about any other part.

177 Did you not at that time tell him that the north line of the Ransohoff building was the north boundary of the land you originally owned?

I never told him anything about the Ransohoff line.

Did you not then by some other language designate that line as having been the north boundary of the land you once owned?

I couldn't tell what the conversation was. I know Mr. Jennings bought, paid for, and owned the Ransohoff property.

You know that he still owns it, don't you?

I know I sold it to Mr. King, and Mr. Jennings is at present the reputed owner.

In some of these conversations with Mr. Jennings last year did you not in substance inform him that you owned nor claimed any land west of the alley-way, and had never owned any north of the Ransohoff property?

I never said anything about west, alley-way, or north, or anything about my claim.

Did you at that time consider that he was occupying with his new building any other portion of your land than the small piece you mentioned?

I did not consider anything about it. I left the whole matter with Mr. Richards and Joseph.

You were very indifferent to your interest and that of your children at that time, were you not?

I left the whole matter with them and told them whatever they did I would sanction. Joseph had then become of age.

At that time did Joseph and Mr. Richards claim that Mr. Jennings was building on more than the small piece?

I don't know anything about it.

Did you hear them discuss the matter at all?

No, not so much as I would like to. Mr. Richards and I would have fixed the thing up, but we could not get Joseph to do so. Mr. Jennings came several times to see him, but could not get to see him. Mr. Jennings asked me to persuade Joseph to come to a settlement immediately. I tried my best to accomplish that but failed. I told him I was very sorry his building was stopped on account of matters pertaining to me, and I would do what I could to have the matter settled.

Why would not Joseph talk about it?

He seemed to feel very indifferent and not satisfied about business arrangements.

What was that business arrangement?

He got much riled in his feelings when he was informed we did not own a foot of land.

178 Was there not during these several conversations with Mr. Jennings the proposition discussed for selling to him the Callahan property?

Yes, sir.

Were not terms agreed upon between you and him for it?

No; I would like to have come to terms at that time very much.

Was Joseph acquainted with this negotiation?

Yes, he must have known it, but he was opposed to him in his feelings.

What was the proposition under consideration?

Mr. Jennings was willing to take the Callahan property, the piece he was building on, and wanted Joseph and Elizabeth to perfect a title to the Ransohoff property, in consideration of all which he would take up the mortgage on the Callahan property.

Did not Joseph at one time give his consent to this?

No, sir.

Did you have any interview with Joseph soon after the meeting at Marshall & Carter's office in relation to this business?

No, sir; for months I could not get to speak to him.

Did he not avoid seeing Mr. Jennings when the latter wished to see him?

No, not more than he did me.

He advised conversation with you and Mr. Richards on business relating to this property, did he?

I could not get him to do as I wanted, and he would not have anything to say on the subject.

Don't you know that Mr. Shearer rented that little house from Mr. Cain as the administrator of the estate of Dr. Richards; that that prop-

erty belonged to the doctor's estate, and that the rent went to the doctor's family?

No, sir; I knew nothing about it. I knew Mr. Cain got shoes and whips and buckskins from them.

Don't you know that the property passed out of Mr. Cain's hands soon after Dr. Richard's death, and that Daniel H. Wells collected the rent?

That property never passed out of his hands that I know anything about.

You say you know Mrs. Braddock went into that little house by Mr. Cain's permission, because no one ever went in there without such permission. What tenant had been in there before her?

I don't know.

Had there been any at all?

I have no recollection.

Do you, of your own personal knowledge, know that in Mrs. Braddock's case the permission of Mr. Cain was sought and obtained?

179 I don't know about the business matters between Dr. Richards and Mr. Cain.

Don't you know that the truth of that matter was that Dr. Richards, of his own will, and independent of Mr. Cain's permission, had Mrs. Braddock go there because she was one of his family, and because he was the owner of the premises?

No, sir.

You say when you sell a thing you don't expect to get pay for it twice. When you sell it and get pay for it once, do you expect to get the thing itself back without buying it?

I don't want anything back that I have received pay for. There's no trouble about that on my part.

Then you don't want or expect to get the parcel of ground which you have sold off that half lot?

As far as I am individually concerned, I do not.

Why have you filed on it then?

To protect those who are upon it.

Re-examined by Cain's counsel:

Before Mrs. Braddock and her daughter moved into that little adobe house, do you know whether either of them ever conferred with Mr. Cain about it; and, if so, which?

I have no knowledge of my own upon the subject.

Was there any outhouses back of that little house, such as privies, etc.?

No.

Do you know whether Mrs. Braddock and her daughter used any outbuildings while they lived there; and, if so, where were these buildings, and to whom did they belong?

Yes; they used one out-building; so did Mr. Shearer and all the men folks who occupied that building.

Do you know by whose permission they did this?

Mr. Cain's and my own.

Where did these ladies get their water?

From our well.

Did your son and daughter join with you in the deeds for the Ransohoff, the Groesbeck, and the Stringfellow property which you sold off that half lot?

No; they did not.

They were under age at the time, were they not?
Yes, sir.
Were you married or single at the time you made these deeds?
I was married.

180 Recross-examined by Richards' counsel:

To whom were you married?
To Samuel W. Richards.
Had he another wife at the time you married him?
Yes.

Re-examined again by Cain's counsel:

Did Samuel W. Richards join with you in any of those deeds?
He did in the Stringfellow deed.
When Joseph Cain died was he in debt?
No.
None of that property was sold to pay any of his debts, was it?
No, sir.

ELIZABETH CAIN.

Sworn to and subscribed before me this 17th day of October, A. D. 1872.

D. BOCKHOLT,
Probate Clerk,
Per E. W. EAST, *Dep.*

JOHN M. BALWINKLE, recalled on behalf of Cain's heirs, says:

The account book produced by Franklin D. Richards, administrator of Willard Richards, deceased, was shown witness.

Do you know anything about that book?
Yes; Mr. Cain used to keep it in his parlor, on the Emporium lot.
How often have you seen it there?
I used to see it every day on the stand in his parlor.
Did you ever see Mr. Cain make any entries in that book?
Yes; hundreds of times; sometimes he would make entries on the table, sometimes on his knees.
What is that book, and what use did Mr. Cain make of it?
He kept the accounts of Willard Richards, and after his death anything pertaining to the family he also kept.
Did he keep any other accounts in that book?
He kept accounts in it with those firms with whom he did business on account of the doctor's family; one was John M. Horne & Co.
Did he keep any of his individual accounts in that book?
No; he had another book in which he kept his individual accounts. The accounts in the first of the book were made in the doctor's lifetime.
Do you know A. L. Lamareaux, whose name is on the back of that book?
Yes; I saw him once; he died while he was on a mission in 1853 or 1854, I think.

Cross-examined by Richards' counsel:

When did you see A. L. Lamareaux, and where?
It was in Liverpool, I believe.
When was it?
I believe in 1852.

181 Do you know that it was in Liverpool you saw him?
Yes; I am satisfied it was there.

What were you doing there?
I was living there.
How do you know it was in 1852?
I think it was.
How many hundred times did you see M'r Cain write in that book?
I never counted them, sir.
How do you know, then, he wrote in it hundreds of times?
Because it was a common occurrence.
Was Lamareaux's name on the back of it at that time?
Yes.
How came it there?
I do not know.
How long since you saw that book previous to its production here in court?
The last time was about a week before M'r Cain's death.
Where was it then?
It was in the parlor.
How do you know M'r Cain kept the accounts pertaining to D'r Richards' family in that book?
Because I've seen him do it, and I have now some of the accounts myself on account of the doctor's family.
Do you positively know that M'r Cain ever made an entry in that book of an item of accounts pertaining to D'r Richards' family?
Yes, sir; I do, and positively swear to it.
Will you point out such an item and read it?
Yes; here it is. On page 211 is the following item: "February 27, 1855. To draft on J. M. Benehisel, $800."
How do you know M'r Cain made that entry?
Because I saw him at the time; he wanted to pay Horne & Co. some money on account of the doctor's family.
How do you know that was an account of D'r Richards' family?
Because M'r Cain said so.
Where was M'r Cain at the time of his making that entry?
He was in the parlor.
Who else was present?
I don't know of any one except M'r's Cain.
How near was you to M'r Cain?
I was sitting at the table with him.
How do you know that was the same book he kept?
Know it by memory.
You have a remarkably good memory, have you not?
182 Yes; I have a pretty good memory; especially of business I have been connected with.
You say M'r Cain kept his individual accounts in other books than this?
Yes, sir.
Are there any other accounts in that book entered by M'r Cain than those pertaining to the family of D'r Richards?
I don't remember of any.
You say you have a good memory; can you tell how many days and weeks you have been in attendance at the hearing of this case?
I can't tell for certain, as I have not been here every day, and I never counted them.
Have you not been in attendance more or less every week since this case began?
Yes.

You have no interest in the result of it, have you?
No.
You are certain it was in Liverpool you saw M'r Lamareaux?
Yes; I am pretty certain.
You say you never saw him but once?
No; I never saw him but once.
How was it, then, that when I first asked you the question where you saw him, that after reflection you answered you believed it was in Liverpool?
Because I was thinking whether I ever saw him in Liverpool or Chester.
When was it he went on a mission to England?
He came to England first. I understood he went to France.
Are you positive it was in 1852?
I think it was; am pretty sure it was.

Re-examined by Cain's counsel:

Are the first entries in that book accounts with the family of D'r Richards or not?
No.
Do you know personally anything about those accounts?
No; I was not here at the time?

JOHN M. BOLWINKEL.

Subscribed and sworn to before me this 4th day of October, A. D. 1872.

D. BOCKHOLT,
Probate Clerk,
Per E. W. EAST, *Dep.*

(Here the account in said book designated by Franklin D. Richards and Samuel W. Richards in their testimony and referred to in
183 John M. Bolwinkel's testimony was here introduced by Cain's counsel and asked to be made Exhibit C; objected to by counsel for Richards' claimants as irrelevant, and that no sufficient foundation had been laid for the introduction of the same.)

NOVEMBER 20TH, 1872—10 a. m.

JOSEPH M. CAIN, recalled on behalf of the Cain heirs, being duly sworn, says:

Where do you, your mother, and sister, Elizabeth Crisman, now reside?
In Salt Lake City.
How long have you resided in said city?
For the last twenty-two years.

JOSEPH M. CAIN.

Sworn to and subscribed before me this 20th day of November, A. D. 1872.

D. BOCKHOLT, *Probate Clerk*,
Per E. W. EAST, *Dep.*

Adjourned till 2 p. m. on the 21st inst.

MORGAN L. HINMAN, being first duly sworn according to law, on oath says:

State how long and when you have resided in this Territory.
I came into this valley with my father's family the 21st day of Sep-

tember, 1848. We moved into a house that fall in the old fort, which house was the property of Willard Richards, deceased. We lived in that until the spring of 1849; we then moved the same house, and another one, on to the lot that is now occupied by the building known a' the Eagle Emporium. The number of lot and block I know nothing at all about. These two houses we put on to this lot, which made two rooms, which we occupied until some time in the fall following, which was the fall of 1849; during which time we built a small adobe house on the same lot, nearer the northeast corner than the log house we put up, which house we occupied until the fall of 1850, in the month of October. From there we moved to Sanpete in the fall of 1850. My father occupied this lot as the tenant of Dr. Richards; that is, Willard Richards, deceased. We lived in Sanpete Valley until the month of May, 1851. We then returned and went to Farmington, Davis County. We then took charge of Willard Richards' business in that county, until a short time after Willard Richards' decease, in the spring of 1854. We left Farmington on the 5th day of April, 1854. Since that time until the spring of 1855, we lived at the point of the west mountain, three miles east of Black Rock. The date we left Black Rock I cannot give exact, but it was in the spring. We then moved back north of 184 the town of Farmington, in Davis County, about two miles north of Farmington, and since which time we have lived in, and in the vicinity of Farmington, and do still reside there.

What was your father's name?

Lyman Hinman.

State if you know what month it was in the spring of 1849 that you moved from the old fort to the Eagle Emporium lot.

I cannot give the exact date; it must have been early in the spring from the fact that we plowed the lot and raised early vegetables.

State whose houses they were that you moved from the old fort to that lot.

They were the property of Willard Richards, deceased.

State whether it is the plot of the Eagle Emporium lot, directed to be made by yourself and brother.

This plot I have in my hand is the one.

State what fencing there was on that lot in the spring of 1849 when you moved there at that time.

None only across the east and on the line of the street. There was no other fence on that lot. This lot, in connection with others in the fourteenth ward, was a joint enclosure of nine blocks. The fence on the east end of said lot was built of posts and poles. This fence was a part of the joint enclosure.

State on what part of that lot the houses that you moved from the old fort were erected, referring to your own plot.

It was nearer the north and east side of the lot than the center. Its location is designated on the plot marked Exhibit No. 1 on file, by the figure marked "Log house first built by Hinman."

State on what portion of the lot was the adobe house that was subsequently built by your father.

It was built east, nearly on the line parallel with the north line of the log house. I should think it was about twenty or thirty feet west of the east line of said lot, as is indicated on this plot, Exhibit No. 1, by the figure marked "Adobe house built by Hinman."

State the size of that lot.

It was ten rods from north to south, twenty rods from east to west, corner of First South and East Temple streets.

Had that lot, or any portion of it, ever been cultivated previous to your occupation of it? and, if so, state the facts in reference to it.

To answer that question fully I should have to refer back to the time of our entering the valley, when a great portion of this land occupied was covered with grass. A portion of said lot, on the extreme west end, had been tilled at the time above stated. The remaining part of the lot showed no signs of ever before having been plowed or cultivated.

185 State whether or not your father had that lot cultivated during the years 1849 and 1850, and, if so, who did the work?

He did have it cultivated, and I done most of the work, my father being employed at other labor, for Willard Richards, and my brother younger than me unable to do much work.

Were you in the occupation, and did you cultivate the entire lot?

We were, and did cultivate the whole lot.

Were there any improvements of any kind in the way of fencing or buildings at the time you left there other than you have already specified?

Yes, sir; on the extreme southeast corner we had built a small corral, as marked, designated by the figure on the plot marked "Corral pole fence built by Hinman."

State the circumstances that caused your father to occupy that lot.

It was in consequence, or in accordance with an arrangement agreed upon between Willard Richards and my father, made before leaving old winter quarters on the Missouri River, to the effect that my father should take charge and oversee to the erection or building of a sawmill somewhere in the country when we should have moved there. In pursuance of this agreement, Willard Richards requested my father to occupy said lot in order that he should be living near by him, that they could easier confer in the business above mentioned.

State if you knew whether during the time you lived there, you ever knew any other person than D'r Richards to own, or claim to own the said lot, or any portion thereof.

I did not.

State if you know whether there was any other building erected on that lot the time you returned from Sanpete, in 1851?

I do not know.

Cross-examined by R. N. Baskin:

You say that you and your father moved upon the lot on which the Emporium now stands as the tenants of M'r Richards; will you state how you know that you were his tenants.

I know it from my father telling me so, and further by repeated conversations and business that I transacted between Willard Richards and my father, and by Willard Richards giving directions how we should proceed with the buildings, or what we should put on the lot; he directed all of our improvements.

Did your father or you ever pay any rent to Willard Richards?

My father was laboring for him most of the time while we were living on said lot, and he did erect a mill for him, but I never was present at any of their settlements, and do not know whether any account was made of rent or not.

186 Will you state some of the business transactions and conversations between your father and Willard Richards which led you to believe that your father was his tenant?

As for giving you the exact conversation that may have taken place

at any particular time, only as in a general sense, I cannot do it. But I have been present repeatedly when Willard Richards has made suggestions regarding certain improvements on the lot. I know that he gave his general directions what we should do on the lot; we had no claim on the lot, only as under him.

Did you ever hear Willard Richards say that he owned that lot 9?

I cannot say that I ever did.

Did you ever hear your father use the exact expression that he was the tenant of D'r Richards, but did not infer that he was from what was done, before stated?

I never heard my father make use of that exact term directly, but when we were about making preparations to move on the lot I asked my father why it was that we did not move onto our own lot. His answer to me was that Willard Richards wished him to move onto the Emporium lot—reasons heretofore stated.

What you have stated, then, is the reason why you say that your father took possession of the last-mentioned lot as the tenant of Willard Richards?

Yes, sir.

You say you asked your father why he did not move on his own lot; will you state where that was situated?

Yes, sir, as near as I can; it is situated in the thirteenth ward.

In what ward is the lot on which is now situated the Emporium building?

At the time we lived there it was in the fourteenth ward. I presume it has not been changed since.

You say your father drew his lot. Will you explain what you mean by that expression?

After the city was surveyed into lots, as I understood it from my father and from general report of the old inhabitants, there were tickets made out with numbers of lots and blocks thereon. They were put together promiscuously and drawn by those obtaining lots (the heads of families of the first settlers).

Do you know in what year that drawing was had?

I think in the fall or winter of 1848; must have been in the fall.

Under that arrangement was any of those who drew entitled to more than one city lot?

I do not know. My father obtained but one, but some having large families had possession of more than one lot, but I never knew how they obtained them.

187 Did D'r Richards draw any lots, and was the Eagle Emporium one of them?

I know nothing further about that than his having possession of certain lots. He had possession ot the lot now known as the Kimball & Lawrence corner. Also one on the north side of the same block. Those I know he owned, because he lived on and cultivated them.

Had he possession of the Emporium lot before you took possession?

He did not reside upon that lot, nor any of his family, as there were no improvements on the lot except a few furrows plowed on the west end.

You referred to a fence being on the east side of the Eagle Emporium lot when you moved on it in the spring of 1849 in connection with the 9 block. By whom was that fence built? Explain all you know about it.

As regards to the fencing of that particular enclosure, I know but little, only that we had to keep the fence in repair as a portion of fence

on the end of the lot to protect what we were raising on the lot, but as regards the fence around the 9 block comprising the thirteenth ward where our lot was situated——

[The witness was here interrupted by reason of this statement of the thirteenth ward being irrelevant.]

What space of ground or number of lots did that fence running on the east side of the Emporium lot enclose?

That was a portion of the fence enclosing nine blocks of this city with the streets running across and with the limits of the nine blocks.

How many acres are in a block, and how wide are the streets?

Ten acres in a block. The width of the streets I have forgotten. It is either six or eight rods.

Then the only fence on the Emporium lot at the time you took possession must have been a portion of a fence embracing about 100 acres in one and the same enclosure?

Yes, near that amount.

Did Willard Richards own or claim all of the land in that enclosure?

No, sir; he did not that I ever knew. There were numerous occupants upon them.

Do you not know that Willard Richards was appointed by the authority of the Mormon church to control and give away, to seperate and portion off that enclosure, as well as all the unoccupied property of the fourteenth ward, to which personally he had made no claim?

I do not know anything of the kind, neither did I ever hear such a thing spoken of until a few days past. I did hear in conversation that such a story is afloat.

188 You have stated that you never knew any person except Willard Richards claim the Emporium lot. Did you ever hear Williard Richards claim that lot in express terms?

I cannot say that I ever did, only in a general way, as I have before stated.

You say that you built a corral in the southeast corner of the Emporium lot. Now was that corral fenced, and was the south line of that fence on the south line of the Emporium lot?

To the best of my recollection it was. It was fenced with a pole fence; to make the south part of the corral we formed on to a fence of M'r Pixton's, which was the south line of the Emporium lot.

Did you have possession of the whole of the Emporium lot, and did you actually occupy the same from the south line up to First South street?

Yes, sir; we did. We occupied from the northeast corner of the lot running south ten rods, and from the northeast corner west twenty rods to the west line.

MORGAN L. HINMAN.

Sworn to and subscribed before me this 20th day of August, A. D. 1872.

D. BOCKHOLT,
Probate Clerk.

HENRY L. HINMAN, being first duly sworn according to law, on oath says:

When did you arrive in this Territory?

I arrived here in 1848, September 21.

State you age at that time, and whether or not you was living with your father.

I was eleven years the March before. I was living with my father.

Where did you live the first two years after you arrived?

I lived a portion of the time in the old fort, and on the lot known as the Eagle Emporium lot. Lived on the Eagle Emporium lot from the spring of 1849, the month of April, I think, until the fall of 1850, the month of October.

What was the size of that lot?

I never measured the lot, but I supposed, in common with others, it to be ten rods wide by twenty long, containing an acre and a quarter. The long way of the lot was from east to west.

Whose lot was that at the time?

According to what my father told me, it belonged to Willard Richards, now deceased.

State whether or not, during the time you lived there, you ever heard of any person, other than D'r Richards, owning, or claiming to own, the whole or any portion of that lot?

I did not.

State whether or not that lot was cultivated during the years
189 1849 and 1850; and if so, by whom, and whether or not the whole of it was cultivated.

The lot was cultivated during 1849 and 1850 by my father, my brother, and myself. It was all cultivated except the ground occupied by the houses and house purposes.

Did you hear your brother's testimony this morning in reference to the houses that were erected on the lot by your father?

Yes, sir; I did. His statement was correct, as far as my memory serves me.

Will you look at the plot marked Exhibit No. 1, and state whether or not you have seen and examined it, and, if so, state whether it is a correct plot of the said lot at the time you lived upon it?

It is; I have examined it.

State when next after you moved from there you noticed that lot, and for what the building on the lot, and indicated on the said plot, were used.

I next saw the lot first of May, 1851. The log building was used as stable-rooms. The adobe house had had a hole cut in the north side of the roof, and glass inserted in the hole, and I was told it was then in use as a daguerrean (gallery) office.

Were you on the lot at any time after this, and did you have any conversation with any person thereon by the name of Joseph Shipley? And if so, state what and where that conversation was, and what took place, as near as you can remember.

(Objected to on account of irrelevancy, and because it nowhere appears that Shipley is not living, and is a witness in this case.)

I was next upon the lot in the spring of 1852. I went with M'r Shipley on the premises; he was planting the lot at the time in the employ of Willard Richards, deceased.

State whether you knew M'r Shipley previous to the time and during the time you was living on the lot?

I became acquainted with M'r Shipley in the spring of 1849; was acquainted with him during the time I resided on the lot.

In whose employ wrs he during that time?

He was in the employ of Willard Richards, now deceased.

In the spring of 1852, state whether or not there were any other buildings on the lot than those indicated on the plot, which we have before referred to, marked "Exhibit No. 1."

Yes, sir; there were. The building was an adobe building. The front part of the building was used, I believe, as a dwelling-house. The back part of the building was used as a bakery. I remember going there with this M'r Shipley to get some crackers. The building was situated near the east line of the lot, between the adobe house
190 represented on this plot, No. 1, and the southern boundary of the lot. I don't know who resided in the house at the time.

Cross-examined by R. N. Baskin:

You say, according to what your father told you, the Emporium lot, when you lived on the same, belonged to D'r Richards. State what the language was as near as you can now remember.

The exact language was that the lot belonged to Willard Richards. I have heard him state this at different times. I understood him in plain terms that the lot belonged to Willard Richards.

How many years ago has it been since that exact expression was made by your father?

I have heard him make the expression during the time that we resided on the lot, and afterwards, as late as the fall of 1859. The reason why I remember this was in consequence of a conversation that took place concerning the improvements that we made on the lot.

Between whom did you hear that conversation?

Between him (my father), my brother, and myself.

Your father's declaration concerning ownership referred back to the time you occupied the lot, did it not?

Yes, sir.

You say that Joseph Shipley was employed in the spring of 1852, by Willard Richards, to work on the Emporium lot. How do you know that fact?

I believe I said he was in Willard Richards' employ. I do not think I stated that he was employed on the Eagle Emporium lot.

How do you know that Joseph Shipley was in the employ of Willard Richards at all?

From the fact that he lived in Willard Richards' family. I have heard Willard Richards give him orders concerning different business, and I have heard him say that he was in Willard Richards' employ at different times.

You do not undertake to say that Joseph Shipley was employed by Willard Richards to do the work that you saw him perform on the lot; but do you not infer merely that he was doing that w rk on the lot for Richards because you knew that Shipley was in the general employ of Willard Richards?

I understood from what Mr. Shipley told me that he was cultivating the lot for Willard Richards, for he said that they were going to raise vegetables for their family use.

You knew nothing about the matter, then, only what Shipley told you?

That's all, sir.

On what part of the lot did you see him engaged in cultivating?

On the part west of the old houses.

191 How far west?

I couldn't state the exact distance, but it was pretty close to the log buildings.

At that time was there any fence on the west of the log building, near the center of the lot?

According to the best of my memory there was not; but I would not be positive.

How near to the center of the lot did the west side of the old log building come?

The west side of the log building was between a third and a half way from the east end of the lot.

Do you know whether Joseph Cain, deceased, at that time resided on any portion of the lot?

I do not know whether he did or not.

Do you know whether he ever lived on that lot?

I do not know. I have seen him on the premises, but did not know whether he lived there or not.

What was he doing there when you saw him?

Nothing in particular, more than passing backward and forward.

Backward and forward from where and to where?

From the premises to the street and from the street to the premises.

How often have you thus seen him?

I could not state; not very frequently, as I did not live in the city. Have seen him at times when I was in the city.

From 1850 to 1857 do you know who was in possession of and who occupied said lot?

Nothing farther than I have stated.

Re-examined direct:

In your direct examination you stated that you heard your brother's testimony in this matter; will you give his name?

Morgan L. Hinman.

HENRY L. HINMAN.

Subscribed and sworn to before me this 20th day of August, A. D. 1872.

D. BOCKHOLT,
Probate Clerk.

WEDNESDAY, *August 21st*, 1872.

Parties present.

ROBERT PIXTON, being first duly sworn according to law, on oath says:

How long have you resided in this Territory, and where did you reside for the first ten or twelve years?

I came to this country in the fall of 1848, in September. I resided first in the old fort for a short time. When the lots were given out, or drawn for, I got a lot on Main street of Salt Lake City, called lot 7, block 69, I think, plot A. I cannot say exactly when I moved
192 from the fort to the lot. I built me a small adobe house about twelve or fourteen feet inside. I think about the first or sixth of December of 1848 I finished my house so that I could live in it. I think it was the second house then built on that street. I lived there (Main street) till about May, 1859.

What was the size of your lot there?

Ten rods by twenty. The long way of the lot is east and west.

Was you acquainted with D'r Willard Richards in his lifetime?

Yes.

State, if you know, how many children he left, and their names.

I don't know.

Who owned the lot adjoining north of yours at the time you moved on your lot?

Willard Richards.

Was there any improvements on that lot—the lot north—when you moved there? And, if so, state what they were as near as you can.

There were no improvements at that time.

Was there any fence in front of that lot?

There was not.

State, as nearly as you can, when the first buildings were put upon the lot known as lot 6, block 69, plot A, and by whom.

There were some log houses put upon that lot; but whether Willard Richards put them up himself I don't know.

State, further, about what time those buildings were put up.

I can't tell the exact date. I know they were there in a very early day. I know that Jennings' Emporium building is now on that lot.

Who first lived on that lot?

Mr. Hinman. I can't tell how long he lived there.

Did you know Mrs. Braddock, the wife of Willard Richards? And, if so, state whether or not *not* she ever lived on that lot, and about what time, as near as you can.

She lived on the lot in an adobe house with slide windows in it, I think, about the year 1852.

Did you know Stephen Longstroth and his wife; and, if so, did they or either of them ever live on a portion of the lot; and, if so, at what time, and what portion of the lot?

I knew the old lady, Mrs. Longstroth, and Stephen Longstroth. They built on the back part of the lot; but whether they lived there I cannot say; I mean the "west" part of the lot.

Do you known John Eddins?

I do.

Did you ever have any conversation with D'r Richards relating to Longstroth building on the back portion of that lot? And, if so, state all that was said in relation to it.

193 (The counsel for Cain objected to the question on the ground of irrelevancy and inconsistency.)

We were walking along in the garden of D'r Richards, where he lived, he merely said he had traded with Longstroth for about eight rods of his (Longstroth's) lot for about six rods of the west end of the Emporium lot; this conversation took place some time previous to his death.

Did John Eddins ever own and live upon any portion of that lot? And if so, state on what portion of the lot.

He lived on the portion of the lot known as the Price property; the east line of that property is about nine rods west from the east front of the lot.

Did the land of John Eddins extend across the lot north to south?

It did.

State whether there was any roadway running between your lot and the Emporium lot, and if so, whether you ever had any conversation or agreement with D'r Richards about it. State all the facts in relation to the roadway.

(Objected to by counsel for Cain on the ground of irrelevancy and it being hearsay.)

Before there was much building done on the lot we were sitting in my house, and he (D'r Richards) stated that he was going to have a road on the south line of the Emporium lot. He said he was goin to leave

a road there of about twenty feet wide for the benefit of that property back there.

Was there a roadway actually opened there?

Yes, sir.

How long did it remain open, and how far back, or west, did it extend?

It extended as far back as John Eddins' place, and I believe there was a little place built in there some two years after, something like a butcher shop. There was never nothing permanent till after Willard's death. I think the building was made of slabs, so that you wouldn't give five dollars for the whole thing when pulled down. It was put up at the end of Joseph Cain's house, that which he lived in.

Do you know who occupied that butcher-shop?

I think old father Topham, who now lives on Mill Creek.

Did you know Joseph Cain in his lifetime?

I did.

When did he die?

I don't remember; it is some years ago.

Where did he live when you knew him?

He lived somewhere in the seventh ward near the old fort or
194 somewhere down in there. Next he came up there and built on the Emporium lot.

When was that?

It was some two or three years after I settled there. In the mean time he had gone to California and returned.

Describe the portion of the Emporium lot on which he built his house.

The south line of his house was what I always supposed to be 20 feet from the south line of that Emporium lot, having a roadway of 20 feet. The Emporium lot was a very gravelly lot and had a hollow on it through which the water passed into my lot. I should judge the house extended some 35 or 40 feet north. It stood about 20 feet back from the east line of the lot.

State, if you know, what portion or extent of ground M'r Cain occupied in addition to that on which the house stood and the space in front the house already mentioned.

As far as the occupancy is concerned, the space back from the front of the lot run about six or seven rods, to a hollow before mentioned. Never knew him to claim or pretend to claim any more in width of the lot than the width of the house, until after the death of Willard Richards.

Did he ever claim or occupy more of the lot than the ground mentioned? State whether or not you know M'r Cain occupied any additional portion of the said lot than that you have just described, after the death of D'r Richards.

He made use of that road, but I supposed at the time it was for the benefit of the doctor's family (here counsel objects to the portion of the answer which gives what the witnesses supposes, as being a response to the interrogation), but have no knowledge of him occupying any other portion of the lot.

What was the occupation of D'r Richards after the time M'r Cain moved into that lot, and up to the time of his (D'r Richards') death?

I think about the time M'r Cain came onto the lot he (D'r R.) was editor of the Deseret News.

What business was M'r Cain employed at during the time he resided on the lot, and prior to D'r Richards' death?

I think a portion of the time he was employed in the Deseret News office, but how much of the time I could not say. What his other employment was I don't know.

Did you ever have any conversation with M'r Cain in reference to his occupation there of the Emporium lot?

I did not.

Did you ever hear D'r Richards express an opinion as to the prospective value of that lot. If so, state what that opinion was.

195 (Objected to.)

In conversation with him, in my house, he said that he looked upon that lot and the lots adjoining, as valuable property, and the day would come when a man would cover them with money to purchase.

Who was the generally reputed owner of that lot during the life of D'r Richards?

D'r Richards, excepting the Longstroth pieces.

Cross-examined by R. N. Baskin:

You say that D'r Richards was the generally reputed owner of the Emporium lot, except that property of Longstroth, during the life of D'r Richards; state how you know that fact.

I know it just as well as that hat is mine; he took it up and fenced it.

Is that the only reason you have?

I can't see what better reason a man can have.

Will you be so kind as to give me a direct answer to the question?

Yes, that is the only reason, and I think it is as good a reason as a man can have.

You say you have never had any conversation with Joseph Cain in relation to his occupation of the Emporium lot; did you ever have any conversation with him in relation to that lot at all?

Not to my knowledge.

Did you ever hear him lay claim to all or any portion of the same, either since or before the death of D'r Richards?

I have no knowledge of it whatever.

I wish you would refresh your memory and try to be positive whether you have ever heard any such claim made by M'r Cain.

I have no knowledge of anything of the kind. He and me never had much talk.

Were you and M'r Cain not at outs with each other, and not on neighboring terms during the period of which you speak?

If we were, I never knew it.

Did you not at one time have a quarrel?

I have no knowledge of it.

You have just stated that you have no knowledge of ever hearing M'r Cain claim any portion of the Emporium lot, either before or since the death of D'r Richards. How can you reconcile this declaration with the one made *with* your examination in chief, to the effect that "I never knew M'r Cain to pretend to claim any of said lot but the width of his [M'r Cain's] house until after the death of D'r Richards"? Do you remember of making this statement in your examination in chief: "I never knew that M'r Cain pretended to claim any of the Emporium lot but what the width of his house stood on, until after D'r Willard Richards' death," or a statement to that effect?

I made something like that statement.

196 Now, M'r Pixton, how can you reconcile this declaration with the one just made, that you never heard M'r Cain lay any claim to all or any portion of the Emporium lot, and that you have no knowl-

edge of ever having had any conversation whatever with him in relation to the lot at all?

The former question was mere rumor, and not personal knowledge; the last question, I have no knowledge of him personally telling me that he owned any part or portion of it.

Why did you not state this fact before?

Because the question was not asked, to my understanding, the same way.

What do you mean by mere rumor? Did you ever hear any person say that M'r Cain never claimed any of said lot, except the width of his house, until after D'r Richards' death?

I never heard any person say anything about it particularly.

What do you mean, then, by common rumor?

Rumor is like a clap of thunder—you cannot tell where it comes from. A person often hears a thing that he cannot tell where it comes from.

When did you first see any fence on the Emporium lot?

In the spring of 1849.

Describe that fence and how much ground was enclosed by it.

I can't describe the fence. When we fenced in, we fenced the entire ward, at first, in one enclosure.

How long did that fence remain?

I couldn't say; I think about one year. I can't be positive.

Who built that fence? State the facts in relation to it, if you remember.

I can't remember; I know I built some of it.

Do you know who built the fence south of your lot?

I could not tell. I don't take notice of such like things.

Who built the fence north of you, on the line of East Temple street?

I don't know who did the first time.

Do you know who did at any other time; and, if so, who and when?

When we went into the block (fencing block), the lot north of me, the Emporium lot, was fenced by Willard Richards' men. I think it was a kind of a mixed fence, some poles and some boards. I am satisfied there were some narrow boards. I can't remember the year.

Do you remember of seeing the men who put up the fence you referred to on the Emporium lot at work on it?

Yes; I do.

How many were engaged?

I think there were two.

What are their names?

197 If I should be walking up the street and see two men at work, unless I stopped to talk to them I should not be sure of their names, but I believe the two that I referred to was Joseph Alston and Father Longstroth.

Are they living; and if so, where?

One of them is, M'r Alston, who lives at American Fork; the other is dead.

On which side of the lot were they at work?

On the north side.

At that time there was already a fence on the east side, was there not?

I cannot say whether there was an eastern fence there at the time or not.

Did you ever have any conversation with Willard Richards on the subject of fencing the Emporium lot at any time?

I really could not say I ever had.

How do you know, then, that the two persons who built the fence on the north side were in the employ of D'r Richards and were building a fence for him?

Because it was known that that lot belonged to him, and the men that were at work were under his employ.

Did you know that fact?

Yes.

How did you know it?

Because everybody that knew anything at all about it said so. I knew it also when Willard spoke about that lot being worth so much value.

Do you know anything of your own personal knowledge as to the ownership of Willard Richards and that the two men spoken of were in his employ?

If they were the two, Joseph Alston and Father Longstroth, they were at work for Willard Richards. One of them, Joseph Alston, told me he was under his employ.

When did he tell you so?

I do not know.

Can you state on your oath of your own personal knowledge that the Emporium lot was fenced by men in the employ of D'r Willard Richards?

As far as that is concerned, owning to the real point, I don't know.

Don't you know that Joseph Cain paid for fencing the north side of that lot?

I do not.

Adjourned till 9 a. m. to-morrow.

198 THURSDAY, *August 22d*, 1872.

Parties met pursuant to adjournment.

Cross-examination of Robert Pixton resumed:

You made use of the expression that the lots of Salt Lake City were given out or drawn. I believe you fixed the time in 1848, or thereabouts. Will you state fully about the matter?

I believe the city lots, I mean those in the vicinity of my lot, were given by Willard Richards.

Did he not give you the lot south of the Emporium lot?

He did. He started down with me from his carriage, walking down four lots. He stated the lot south of me he had reserved for Moses Whitaker, the one south of that, being on the corner, he had reserved for a gentleman by the name of Harrison. Coming back he referred to the lot I now have, that I could have that one; the corner lot, the Emporium lot, he reserved that for himself.

Explain under what arrangements among the early settlers it was that gave D'r Richards the authority to dispose of the lots in the vicinity of the Emporium.

I couldn't do it.

Don't you know that some arrangement was made as to the disposition of city lots?

I have no personal knowledge that any arrangements were made, as far as the city lots were concerned, but in regard to the five and ten acre farming lots, those were drawn by ballot.

When D'r Richards gave you your lot did he give you any deed for the same, or did he merely direct you to go and take possession?

He gave me no deed, but told me to take possession, and told me to go to Thomas Bullock and pay for the survey.

Did D'r Richards ever live on the Emporium lot? If so, state when and where he lived on it.

I have no knowledge of D'r Richards living there, personally. One of his wives lived on it, or some one said to be his wife, by the name of Ann Braddock.

Was she said to be the first, second, or third wife of the doctor?

I never heard any statement of the kind, only that she was the doctor's wife.

Did you know the doctor's first wife?

I did not.

Do you know of your own knowledge that Ann Braddock was the wife of Dr. Richards?

I do not.

When did the doctor (Richards) say to you he intended to reserve the Emporium lot for himself? And state the exact language he used as near as you can.

199 In the fall of 1848, I can't tell the exact time, it was after I came in some time, but when we had been gone through the lots on our return, coming on to that lot he says: "I have reserved this for myself, having disposed of the other three," or such language.

From the time you speak of up to the death of D'r Richards, where did he reside?

At the time I now speak of he lived in a wagon or carriage. He had a small adobe house built on the lot on the block north of the Emporium lot. At the time of his death he lived in the little cottage west of the Constitution building, and on the block north of the Emporium lot.

How long had he resided there before his death?

I could not say; perhaps two years.

Where did he reside before that time?

In his carriage.

You moved on lot 7 in the year 1848?

Yes, sir.

And resided there in person until 1859?

I have no knowledge; I was frequently called away, but made that my home.

During your residence there, were you ever absent for any long period?

To the best of my knowledge, not more than three or four months at any time, and that lengthy period only on the occasion of going to Green River.

Then from 1849 to 1859 you was almost every day on your premises, more or less?

I wish to state with the exception of that time of three or four months in making a farm. I was absent for several days, but was there more or less every week.

How much of that time, I mean from 1849 to 1859, did Joseph Cain live upon the Emporium lot?

I could not tell; I don't know the time he got onto the lot. He came there in an early day, and was working for the doctor. He lived there several years before his death.

During any of the time Cain lived on lot 6, block 69, plot "A," was there any fence on the east side of the lot?

That I cannot state. My impression is there was a pole fence.

Did it extend the whole length of the east side of the block?

I believe it did.

Was there any fence on the north side of the Emporium lot on the line of First South street?

To the best of my knowledge, as I stated yesterday, there was a board or pole fence.

200 Do you know when it was first put up?

I think it was in the spring of 1850.

Did it extend the whole length of the north side of the Emporium lot?

That I am not able to say.

Did it extend the whole length of the north side of the Emporium lot?

Of course there was a fence there, but I can't remember what kind of a fence it was, only that I saw them putting one up.

What kind of a fence was there running through the middle of the Emporium lot south to the north line of your lot?

I have no recollection.

Don't you remember that there was some kind of a fence near the center of the Emporium lot back of the house M'r Cain occupied, and extending back to First South street?

Positively, I don't know that there was.

Had not Joseph Cain a corral and stable near your north line and immediately back of his house to which the twenty feet alley-way led?

I don't remember of any corral or stable except the one of M'r Eddins, about ten or eleven rods from the front street.

Is not your memory very poor, and are you not unable to remember clearly and acurately incidents and things of long standing?

I remember things that I have been intimately acquainted or connected with clearly, but those things I had nothing to do with I do not remember.

Did you ever converse with Joseph Cain on the subject of his using the twenty feet alley north of you?

I never did, that I know of.

Did you ever converse with any person on that subject, or in relation to M'r Cain's occupation at all at any time?

I have no remembrance at the present time that I ever did.

How do you undertake to state, then, on your oath, that you supposed Joseph Cain used that alley-way for the benefit of D'r Richards' family?

I made such statements on supposition that Joseph Cain was acting for the doctor after his death, and he was using the road for their benefit to help them (the doctor's family) to live.

You know that M'r Cain built a house on that lot?

I know there was a house built there, but I never saw M'r Cain build it. I saw another man to work on it. I can't tell his name. M'r Cain was frequently around there, and after the house was completed he took possession of it, and lived there with his family till he died.

201 Was there any fence on the south side of the Emporium lot, and if so, who built it?

The mud fence on the west end I built, but the pole fence on the east end I am not positive whether I built it or whether Mr. Cain built it. The fence ran east and west on the north line of my lot.

How far west did the pole portion of it extend?

It extended back, I think, six or seven rods. It could not have been ten.

Was there any other fence on that Emporium lot other than you have described?

I can't think of any.

Was there any fence between the north line of Mr. Cain's house, running from East Temple street west, and the northeast corner of the Emporium lot?

I can't remember. I have heard there was.

Was there not an open space northeast of Mr. Cain's house during his life-time, extending out to the fence on the north side of the Emporium lot?

There was a vacant space, except a little adobe house of Cain's, out to the Emporium corner.

Did not Mr. Cain use that vacant space for a wood-pile, stable, and wagon-road?

I don't know. I know he had a wood-pile behind his house.

ROBERT PIXTON.

Subscribed and sworn to before me this 22d day of August, A. D. 1872.

D. BOCKHOLT,
Probate Clerk.

SEPTEMBER 5, 1872.

JOHN EDDINS, of lawful age, sworn on part of the Richards claimants, says:

How long have you resided in this Territory?

I came here in the fall of 1848 and have resided here ever since.

Were you acquainted with Dr. Willard Richards in his life-time, and if so, state when that acquaintance began and how long it continued?

I became acquainted with him at winter quarters in the fall of 1846, and knew him from that time till his death.

Were you ever in his employ, and if so, how long?

I was in his employ seven years. I went into his employ from the spring of 1847 and continued until he died.

Did you live with him or his family during that time?

I did, five years out of that time.

Do you know the number of the block and lot and plot in Salt Lake City on which the Eagle Emporium now stands?

202 It is block 69, lot 6, plot A.

How long have you been acquainted with that lot?

Ever since we came into the valley.

Who owned that lot at that time.

Willard Richards, now deceased.

How long did he own the whole of it after you came to this country?

He owned it all until he traded six rods to Mr. Longstroth. That was the first I knew him to part with.

SEPTEMBER 6, 1872.

Do you know on what part of that lot the first house was built and by whom; state all you know about it, and about what time it was built?

I can't exactly tell the time, but I think in the year 1849 or 1850. I hauled it up myself from the Old Fort. It was placed on the east half of lot 6. I think from two to three rods from the middle of the lot, and nearer the north than the south line. I think one Hinman and his boys put it up.

Who first occupied that house and for about how long?

Mr. Hinman occupied it first, and from the best of my recollection he

lived there in the neighborhood of two years. I would not be certain about it.

For what was it first used?

A stable.

About how long was it used for a stable and by whom?

By Dr. Richards. It must have been used by him several years. I can't say now how long.

How do you know it was used for Dr. Richards as a stable?

Because I kept my team in there from the time Hinman left until the stable was removed onto another lot.

What do you mean by "my team"?

The team I drove by Dr. Richards.

What was the general nature of your business while you lived with Dr. Richards?

Teaming.

To whom did the team belong which you kept in the stable?

To Willard Richards.

Did you know Joseph Cain in his lifetime?

Yes, was well acquainted with him.

Where did he live while you were acquainted with him?

He lived in the Old Fort when I first knew him, in the sixth or seventh ward, in Salt Lake City. He moved from there into a small adobe house of Mr. Hinman's on the corner of lot 6, the northeast corner; he remained there till he built a new house on the south-
203 east corner of the same lot. He lived there (in the new house) till he died.

At what time did M'r Cain move onto that lot?

It must have been in 1850 or 1851. I am not certain as to the time.

Do you know anything about how he came to move there; and, if so, state.

I believe he moved up to assist D'r Richards in the printing-office.

What portion of that lot did M'r Cain occupy?

He occupied the portion his house stood on, back to within a rod or rod and a half of the line of the piece of ground the doctor gave to me.

What was the distance from north to south of the ground he occupied back to the piece you owned?

Forty feet, to the best of my recollection. His house covered it all, anyhow.

What outhouses and improvements did M'r Cain have, and where were they situated?

He had a bake-house joining to the west side of the house, pig-pen, and back-house, all in a line right west of his house. I believe there was a few logs notched, and put one on top of another, for a stable, situated on the west end of the piece of ground Joseph Cain occupied.

State whether or not D'r Richards used the stable you have mentioned after M'r Cain lived there; state if you put your horses in.

Yes, of course he did.

When was that stable moved away?

I can't tell exactly; in 1852 or 1853; I don't mind.

Who took it away, and where was it taken to?

It was taken up to a lot on the block north, within a stone-throw of D'r Richards' house. Willard Richards had it moved.

State whether you ever owned a portion of lot 6; and, if so, what portion.

(Objected to as irrelevant by Cain's counsel.)

I owned forty feet on the east half of the west end of the lot; M'r

Longstroth had six rods on the west end; Riley owned the next forty feet east of him, and I owned the next forty feet east of Riley.

Will you explain what you mean by saying you owned forty feet?

I owned forty feet fronting the north on First South street, running back clear across the lot, excepting a road at the south end.

From whom did you get that piece of ground and when?

(Objected to as irrelevant by Cain's counsel.)

I got it from Willard Richards in 1853.

(Answer objected to as irrelevant by Cain's counsel.)

Did you ever occupy that ground; and, if so, state when and for what length of time?

(Objected to as irrelevant by Cain's counsel.)

204 I occupied it from 1853 to the spring of 1855; I think I left the first of May, 1855.

What kind of a house was on that ground, and where was it situated?

An adobe house, one room, a cellar dug in front of it, partly walled up, situated on the north end; the cellar was dug twenty feet from the north line.

How far was it the house stood from the east line of the forty feet?

The house stood on the extreme west line. I might have left a path by the house about twelve by fifteen feet; the long way was east and west.

At the time you lived there who occupied the little house that Cain moved out of when he built his new house?

Two ladies; one named Franklin and the other Braddock.

Do you remember when they moved there and how long they lived there?

They moved there after M'r Cain moved out, to the best of my knowledge. They were living there when I left.

Do you know whether or not they or either of them were wives of Dr. Richards?

Yes, both of them were.

During the time you lived on that 40 feet was there any fence at all between your house and the little adobe house and M'r Cain's residence?

No; there was no fence there. There might have been some fence at the south end of my 40 feet, where I kept some hay, but running across the lot there was not any.

State whether or not you had any on that lot.

(Objected to as irrelevant by Cain's counsel.)

I had an adobe stable about twelve feet square on the south end of my forty feet, leaving a wagon-road south of it. I think it was built on the west line of the forty feet.

State as near as you can the width of the space left on the south side of your stable.

I think about ten or twelve feet.

Why was that left there?

(Objected to.)

It was left for a road when D'r Richards gave me possession of that piece of ground. He came down with me and showed me his stakes (some three stakes), on the north line of the lot, and said "Here, John, is forty feet of ground you can have to build your house on," and he took me down on the lower end and told me he wanted enough ground left for a street to accommodate those that owned the land along the lot. The street was to be run along the south side of the lot from East Temple street west to Longstroth.

205 (Objected to by Cain's counsel on account of incompetency and irrelevancy.)

State whether or not there was any space of the ground occupied by Mr. Cain on that lot, and if so, how much.

Yes, there was a small meat market about twelve feet square south of Cain's house.

What kind of a structure was that market, and who occupied it?

It was of slabs, and occupied by a man by the name of Topham during all or most of the time I lived there.

Was that market there at the time Dr. Richa rds gave you the piece of ground?

Yes.

From whom did he get permission to occupy that place, do you know?

I don't know.

What was immediate ly in the rear of that market and between it and your line?

I don't think there was any building at all.

Did that market extend to the south line of the lot?

I would not be positive, but it did, I think. There was a passage between it and the south line.

State whether or not that meat market was on the ground you have described as being intended for a roadway.

Yes, it was.

Up to the time you resided on that forty feet had there ever been any permanent building erected on that line?

There had not.

Was there any other reason than that you have given for your leaving a space on the south side of your stable?

Not that I know of.

State whether Joseph Cain occupied or used any portion of the ground in that alley-way up to the time you left there, if you know.

He did not.

Up to the time you left there who occupied the east portion of lot 6, north of Mr. Cain's house?

I can't answer that question correctly. Mr. Cain was one of the administrators of the estate of Willard Richards, and, of course, had, as I supposed, the privilege to use it as he wished. Dr. Richards was in possession of it up to the time of his death.

Up to the time of Dr. Richards' death, state if you know whether Joseph Cain ever claimed any portion of the east half of that lot.

He claimed what his house was upon, and back probably about eight or eight and one-half rods.

206 Did he ever claim any portion of the lot north of that?

Not that I ever heard.

After Joseph Cain went there, state whether or not his permission was asked, or obtained, to secure the use of the stable used by you for Dr. Richards, or any portion of the lot north of his house.

(Objected to by Cain's counsel as leading.)

No, sir. I knew him to be asked.

While you lived on that 40 feet you owned, did any one else ever claim ownership of any portion of it, and if so, who?

No, sir.

When did you sell that, and to whom?

(Objected to as irrelevant by Cain's counsel.)

I sold it to Mr. Price. I can't tell the date exactly, but it must have been in 1854 or 1855.

State whether or not, if you know, whether Joseph Cain as administrator of the estate of Willard Richards ever rented any portion of that lot or the building thereon to any person?

(Objected to by Cain's counsel as leading.)

I presume he rented them as administrator of the estate. I presume he did. I won't be positive.

Who occupied the small adobe house after Mrs. Braddock and Franklin left?

Snelgrove, a shoemaker, and a whipmaker, whose name I don't remember.

Do you know of whom they got permission to occupy that building?

I don't know positively. Mr. Cain, as I suppose.

What kind of a fence was on the north line of that lot in 1853, the time you went on it to live?

There were poles up to the line of the fence, up to the west line of my lot. From there on there were boards.

Who built that north fence?

Mr. Longstroth put it up; Dr. Richards furnished the material.

Who hauled the material?

I did, myself, at the instance of Dr. Richards.

When was that fence put up?

About a year, maybe a little more, before Mr. Longstroth got the west piece.

Were you much acquainted with that lot after you left there?

No, I was not.

SEPTEMBER 7, 1872—10 a. m.

Examination of John Eddins resumed.

When did you say that Mr. Cain moved on to the Emporium lot?

In 1851 or 1852, I don't remember.

207 Do you have a distinct recollection of the event of his moving there?

Yes, I have; I was right there then. I lived with D'r Richards at the time.

Do you remember distinctly what improvements were on the half lot when M'r Cain moved there?

I do.

Was there any fence on the east side of East Temple street?

Yes; a pole fence.

Don't you remember of there being a fence on the south of the lot also?

I don't think there was any fence there at the time he moved there.

Don't you remember there being a fence there after he moved there?

There was a fence put up there some time afterward, by whom I don't know.

How long after?

I can't tell.

Was it while you lived on the forty feet?

No.

Then from the time M'r Cain moved on the Emporium lot until you moved your office in 1855, you are positive there was no fence on the south of the east half of the Emporium lot?

No, I am not positive; there was some fence along the line, but

whether it reached clear along the lot I don't remember. I think it was a pole fence.

During the time you lived there was there any fences on the south line on the east half of the Emporium lot, commencing on Main street and running west to the east line of your forty feet?

I won't be positive, but I think M'r Pixton put a fence there.

What makes you think he put it up?

Because he cultivated a garden there.

From anything you know of your own personal knowledge, may not M'r Cain have built that south fence?

I don't think he did; he might have.

You don't know, of your own personal knowledge, who built that fence, do you?

I do not.

How far was the south side of M'r Cain's house from the south line of the Emporium lot?

I can't give the exact distance. I suppose from 14 to 15 feet.

You say there was an alley-way south of M'r Cain's house?

I believe there was an alley-way, but it was not traveled much.

Did you ever use that alley-way for any purpose while you lived there?

I frequently passed through there to go to the meat-market.

208 Did you ever use it as a wagon way?

No.

Did you ever take your horses through there to your stable?

No. There was plenty of room on the north side to get in at that time.

Then you had access to and from your stable from the north side of the lot?

Yes.

Did you always go that way to and from your stable?

I habitually went in from the north side.

You say there was a pair of bars on the north side?

Yes.

Were those bars on your ground?

No. I think they were a little east of my ground.

You say there was an alley-way on the south of the butcher-shop?

Yes; I think there was.

What constituted the southern boundary of that alley?

Montague had a house on the corner of Pixton's lot.

You say that some time while you lived on that lot M'r Cain built a a stable west of his house?

Yes.

Was there any corral about that stable?

I don't think there was.

Was that stable on the line between you and M'r Cain?

No; it was not.

Was there any fence on the west of your stable?

Yes.

Was there any on the south?

There was. I think Pixton had a fence there.

How far from your stable was the fence on the east side of it?

There was no fence on the east side clear across the lot.

How far did the fence, if any there, extend?

It did not extend for probably two or three rods enough to go around a hay-stack.

Are you positive there was no other fence east of you on your east line than what you have described?

M'r Cain may have had a little fence around or on one side or the other. Besides this, there was no fence whatever.

Was there any fence running from north to south near your east line?

No.

You say that in 1853, when D'r Richards gave you that 40 feet, you saw three pegs on the north line. Where was the one farther east standing?

209 On the east corner or northeast corner of my ground.

It was not far from the northeast corner of the east half of the lot, was it?

It was within 14 or 15 feet over on the east half.

Have you heard any person say recently it was about that distance?

No.

When you saw the stakes, did they look as they had been recently driven?

Yes, they did.

Do you know who drove that stake?

D'r Richards.

Did you see him drive it?

I saw him at work there.

Who was with him?

I don't think anybody.

What did you see him doing?

Measuring.

With what?

I presume a tape line.

Where was he measuring from?

He was measuring from the west end.

Where did he begin?

He began at Longstroth's corner.

Which way did he measure from there?

He measured east.

How far east?

Forty feet east and drove a stake.

What did he drive it with?

An axe.

What did he do then?

Measured another forty feet and drove another stake.

What did he do then?

Stopped measuring and went home.

You have stated where he drove two stakes, where was the third driven?

The other was the one he commenced.

How long was he engaged in making these measurements?

About half an hour, probably.

You did not assist him, you stated?

No.

Who did?

I do not think any one did.

What hour of the day was it?

I do not remember; I believe it was in the forenoon.

210 In what year was it?

In 1853.

How long was it before you moved upon your lot?

In the summer of 1853.

After D'r Richards finished measuring, where did he go?

He went home.
How do you know?
I saw him go up that way.
Where was you while the doctor was making these measurements?
I was across on the other side of the road.
What were you doing?
I do not know that I was doing anything.
Were you standing in one place during the time?
Pretty much.
Was there any person with you?
I do not remember; in the house Uncle Levi and folks were passing around.
You were not in the house, were you?
I was standing against Uncle Levi's house.
While the measuring was going on did you change your position any?
I might have moved around a little.
You were there the whole time it was being done?
Yes.
Was there any fence in front of your uncle Levi's house?
Yes, there was a fence in front.
Was your uncle Levi's house immediately opposite where the doctor was measuring?
It was a little angling.
How far was the doctor from where you were standing?
Eight rods, possibly a little more.
Did you converse with the doctor while he was measuring?
No.
Why did you not go over and assist him?
I did not think he wanted me.
Did you see any person passing on the side of the street the doctor was measuring?
I do not remember.
Now, do you not remember you saw some person standing over on the sidewalk?
No; I do not.
What did the doctor do with the axe when he went away?
He took it away with him.
D'r Richards always walked with a c*ain*, did he not?
211 Not always; I have seen him without a c*ain* sometimes.
He was a very corpulent man, was he not? About how much did he weigh?
I presume he weighed near 300 pounds.
When you saw him measuring across the road from you, did you know what he was doing?
I did not know what he was measuring at the time.
Was it not an unusual thing for him to perform manual labor?
I never saw him doing any very hard work; I have seen him go round the garden occasionally, especially when he first came into this valley.
What kind of a tape line had he?
I was not close enough to see.
Are you sure it was a tape line?
I am not certain; I think it was.
How did he manage to measure it?
I was across the road, near Levi Richards'.
About how long was the tape-lime?

I was not close enough to see; I suppose from fifty to eighty feet, maybe one hundred.

I don't ask you for your supposition, but want to know what your remembrance is as to its length.

I think, to the best of my knowledge, he measured twice.

Did you ever see a post set into the ground near the stake at the northeast corner of your lot, which stake you say D'r Richards drove?

There were posts all along the north side of that lot.

There was a pair of bars near that northeast corner stake?

Yes, sir; there was.

Was there not also a fence running south from that stake across the lot?

No.

Did you ever see a stake on the south of the Emporium lot near or on your east line?

No, sir.

At the time D'r Richards made that measurement did he see you standing there?

I don't know whether he did or not.

How far did you watch him after he finished measuring?

I saw him come across the lot and go home.

Did you ever have any conversation with him on the subject of measuring there, afterwards?

Not till some days after.

Did he ever afterwards tell you that he had measured that ground?

212 Yes, he told me he had measured the piece of ground for me.

Did he ever give you any deed for that land?

No.

Did you ever make any measurement of any portion of the Emporium lot?

No.

Did you ever assist in making any measurement?

I presume I measured the place for my stable and helped the mason measure a place for a cellar.

Did you ever measure Longstroth's lot?

No, sir.

Who owned the ground between you and Longstroth?

A man by the name of Riley.

Did you ever measure Riley's lot?

No, sir.

Did you ever measure the dimensions of your own lot?

Only in front.

Did you refer to the measurement of your cellar or did you not?

Yes.

How was the measurement of your cellar made? State in full.

I don't know now how long it was; it was quite a large cellar; the long way of the cellar was lengthwise of the lot; I think it was thirty feet or over.

The measurement you there made was done for the purpose of locating your cellar, was it not?

Yes; it was.

Except the measurement already stated you never made any other on said block, did you?

No.

How do you know, then, that the stake on the northeast corner of

your ground was about fourteen feet east of the center of the Emporium lot?

I can tell that by guess. I know where my piece of ground is; I can point it out to you to-day.

Joseph Cain owned the ground his house stood on, did he not?

Yes, I believe he did; whether he ever paid for it I don't know.

What did you pay for your lot?

I did not pay anything, only work.

Willard Richards had the distribution of the ground on that block, did he not?

I believe he did.

Did he not give or distribute to you your ground the same as he did to others, without reward?

No, sir.

213 Don't you know that Joseph Cain used a portion of the lot north of his house as a lumber yard?

No, sir.

Did you ever see any house on it while you lived there?

I don't remember seeing any, only what I hauled there myself.

Do you not remember having a pig-pen on the lot east of you?

I do not remember it.

Did you ever have any conversation with Dr. Richards in relation to the ownership of that lot after Joseph Cain moved there?

Yes, sir; I did; about the piece north of Joseph Cain's house, and said (when he showed me my lot) he designed to have an alley way up to the west end of Joseph Cain's piece, between Joseph Cain and me, and to extend down west for the accommodation of Longstroth and me.

You have just said that Joseph Cain owned what ground his house stood on, and also that the doctor told you when he gave you your lot that he was going to leave an alley way west of Joseph Cain's piece. Now can you reconcile this statement with the one you have made that Dr. Richards owned the whole of that lot until he conveyed to Longstroth in 1853?

I don't see that I can explain to you any more than what I have. I don't know whether Joseph Cain ever paid for his lot or not; I only know what the doctor told me.

Is that all the explanation you can give?

Yes.

How do you know Dr. Richards, during the time Joseph Cain lived on a portion of the Emporium lot, ever owned any part of the same east of your east line?

Because he told me he did the time he showed me that road.

Then all you know about it is what the doctor told you?

Because he always had charge of it from the time I knew him. I never knew any one to have any say about it, up to the time he died, but him.

Did you know him to have any say?

I never knew any other person to have any say about it but him.

Did you ever have any conversation with him, Joseph Cain, about that lot?

No; I think not.

Did he ever tell you how much he owned?

No.

Did you ever hear any one else say how much he owned?

I have heard the doctor's people say he only owned forty feet.

Who do you mean by the doctor's people?

Some of his folks.

214 Name them.

I mean Heber J. Richards, for one, and Sarah Annie.

When did you hear them say so?

After the doctor's death; I cannot tell exactly the time; also Mr. Pixton.

How many times did they tell you so?

Frequently.

About how long after the doctor's death was it they told you this?

I cannot tell the time; some little time—not long.

Where was it?

When I have been in their company.

What gave rise to the conversation?

I do not know that I can tell you any more about it than I have.

When did Heber John tell you about it?

Some time back; not recently.

Was it two or six months ago?

It is a year or two back.

What gave rise to such a declaration?

I cannot tell you now of anything in particular.

You never heard of any controversy about the lot until within the last year, did you?

I do not remember.

Have you ever had any conversation with Heber John Richards, about the lot, until this controversy commenced?

Nothing, only a few passing remarks, something about the corner, &c.

Then you predicate your statement "that Joseph Cain only owned what his house stood on" upon what Heber John Richards and some of Willard's wives told you?

No, sir; I never knew him to occupy any only what his house stood on and the yard back.

How do you know?

I know because I lived there and could see.

May not, from anything you personally know, Dr. Richards have obtained leave of Joseph Cain to put your team in that stable?

The stable never belonged to Joseph Cain.

After that stable was removed did you ever know of Dr. Richards occupying any portion of that lot east of your line?

Yes; after that his wives lived there.

May they not have lived there by Joseph Cain's permission for aught you know?

They may have, but I don't believe it.

Except what Dr. Richards told you, you don't know whether he

215 ever owned any portion of the lot east of you, do you, after Mr. Cain moved on it?

I don't know that I do.

JOHN EDDINS.

Sworn to and subscribed before me this 7th day of September, A. D. 1872.

D. BOCKHOLT,
Probate Clerk,
Per E. W. EAST, *Dep.*

SEPTEMBER 7, 1872—p. m.

GEORGE A. SMITH, being duly sworn according to law, says (being introduced on the part of Richards' heirs):

Were you acquainted with D'r Willard Richards and Joseph Cain in their lifetime?

I was.

Were you at the time acquainted with the fact that soon after D'r Richards deceased Joseph Cain was appointed his administrator?

I so understood, and believe he was.

Did you ever hear any conversation in regard to the estate of D'r Richards in which Joseph Cain participated, and in which reference was made to the Emporium corner or lot? If so, state all the facts in relation to it.

I met with Joseph Cain, President Young, and Heber C. Kimball in the street. Mr. Cain was in conversation in relation to the liabilities of the Richards' estate, the first part of which I did not hear, but M'r Cain said that the trustee in trust's account against D'r Richards' estate was so much that there would not be property to satisfy them, and was anxious to know if some compromise could not be made by turning out some portion of the property. The answer by the trustee was, "You let the church have the corner of the doctor's lot above your house, and we will not trouble you with the account." Mr. Cain said he would do so.

About what time did this conversation occur?

I think it was about two months after the doctor's death.

GEORGE A. SMITH.

Sworn and subscribed before me this 7th day of September, A. D. 1872.

D. BOCKHOLT,
Probate Clerk,
Per E. W. EAST, *Dep.*

SEPTEMBER 9—10 a. m.

EDWARD SNELGROVE, being duly sworn on behalf of the Richards claimants, says:

How long have you resided in this Territory?

Twenty years.

216 Are you acquainted with the lot on which the Jennings Eagle Emporium now stands?

Yes.

Did you ever occupy any building on any portion of that lot? and if so, state on what portion of the lot it was situated.

I occupied a part of a building where the Eagle Emporium now stands.

At what time was that, and how long did you occupy the building, and for what purpose?

(Objected to as irrelevant by Cain's counsel.)

Sometime in the summer of 1854 I went there; I think I was there about two years, maybe a little over; I had a shoe-shop.

From whom did you get permission to occupy said building?

(Objected to as irrelevant by Cain's counsel.)

Mr. Daniel Shearer.

To whom did that building belong, if you know?

(Objected to as irrelevant by Cain's counsel.)

I understood it belonged to the estate of Willard Richards, deceased.

Did you pay any rent, and if so, how?

(Objected to as irrelevant by Cain's counsel.)

Yes; I paid rent in the way of my work.

Did you ever make payments of rent by letting other parties than M'r Shearer have work from your shop, if so, whom were they and by what arrangement did you make such payment?

(Objected to as irrelevant by Cain's counsel.)

I let other parties than M'r Shearer have work; some to M'r Joseph Cain's family, but mostly to the family of Willard Richards. In the absence of money we had to make other arrangements, for which I received credit from M'r Shearer (for the work I let the parties have) on my rent; that was the understanding between M'r Shearer and myself that the rent should be so settled.

About how often did the family of D'r Richards get work from your shop, in that way, while you occupied that building?

Occasionally, all the time I occupied the building.

State whether or not you usually paid your rent in that way.

All the time, to the best of my recollection.

During the time you were there, were you acquainted with Joseph Cain, now deceased?

Yes, sir.

Did you ever hear him during that time lay claim to the building you occupied, or the ground on which it stood?

No, sir.

Who was the generally reputed owner of that property during that time?

217 (Objected to as hearsay by Cain's counsel.)

Willard Richards, to the best of my understanding, for some time after I went there; but before I left there I understood it went into the hands of President Young. I had the impression, but have no personal knowledge on the subject.

Did you ever hear Joseph Cain say anything about the ownership of that property?

No, sir.

Did you know he was the administrator of the estate of Willard Richards?

That was my understanding at the time.

During the time you were there, did you ever hear from any one that Joseph Cain owned or claimed to own that property?

No, sir.

Cross-examined by Cain's counsel:

Yo' say you understood the building you occupied as a shoe-shop belonged to Willard Richards. Let us have your reasons for so understanding.

My reasons are from the fact of my working for Willard Richards' family. I don't know that I have any other reasons.

At the time you did this work D'r Richards was dead, was he not?

Yes.

You have said that you also made work on the rent for the family Joseph Cain; about how often did you work for them?

As I stated before, not so frequently as the other family.

During the time you occupied that shop, did you not do all the shoemaking for M'r Cain's family?

No, I did not.

How do you know that fact?

From the fact that I did but very little for him at a'l.

Did you not do work for other than M'r Cain and Willard Richards' family which went on the rent of your shop?

No, not that I remember. I might have done some work for M'r Shearer which went on rent.

Don't you remember doing work for M'r Shearer?

No

Don't you remember having done some work of that kind for M'r Shearer?

I don't remember.

Did you rent by the month?

Yes.

How much did you pay a month?

Three or four dollars; I don't remember which.

E. SNELGROVE.

218 Sworn to and subscribed before me this 9th day of September A. D. 1872.

D. BOCKHOLT, *Probate Clerk*,
Per E. W. EAST, *Dep.*

DANIEL SHEARER, being duly sworn on the part of the Richard claimants, says:

Do you know where Jennings' Eagle Emporium building now stands?

Yes.

Did you ever occupy any building on that? and if so, state where it stood, as near as you can.

I occupied a building there, and as near as I can come at it now, it stood between three or four rods west of East Temple street. I think it stood a few feet south of the southwest corner of the Emporium building. The house stood on the northwest or near the northwest corner of the building now numbered 47, and in which the co-operative drug store is now kept.

When did you first occupy that building, for how long, and for what purpose?

(Objected to as irrelevant by Cain's counsel.)

I hired it to carry on the whip business and I think we went into it in 1854; whether we occupied it two or three years I don't now remember.

To whom did that building belong?

I don't know that I can say positive, but I can say what I suppose about it. I suppose in the time of it that it belonged to the estate of Willard Richards, for two reasons: One was, I went into the building one time and saw some women knitting lace, and I ascertained from them that they were some of Willard Richards' wives; I suppose from what I saw and heard at that time that the building belonged to Willard Richards or his estate; I don't remember whether it was before or after his death. Another reason: After I hired the building, I hired it of Joseph Cain and paid him the rent, and in paying rent to him I understood he was acting for the estate of Willard Richards.

Did you have that understanding during the whole of the time you was there?

Yes, I did.

Did you let any portion of the building to other persons, and if so, to whom?

When I hired the building a M'r Henskinson was in partnership with

me; I done all the business of the firm; I hired the building and let two shoemakers in, Snelgrove and Johnson.

To whom did the parties you let in with you pay rent?

219 To me; they paid to me; but it was sometimes done by work for the Cain or Richards family.

Do you know of any work having been done by either of the parties in with you for the family of Dr. Richards which was applied on the rent? if so, state who did it, and what kind of work it was.

Mr. Snelgrove did considerable shoemaking, and he did more or less for Dr. Richards' family; whenever there was a settlement between me and Mr. Snelgrove the account for shoemaking done for Dr. Richards' family was allowed; when I made a settlement with Brother Cain about the rent he would always allow the account.

State whether or not that was done frequently and during all the time you occupied that building?

Yes, it was.

Did you ever have any conversation with Joseph Cain about his possession or ownership of that lot or any portion of it? and state it as near as you can now recollect it.

While we were in that building a lady came and put up a little meat market right in front of the building, and according to my recollection now I went to Joseph Cain to know why our front should be obstructed. He told me his line did not quite reach the little building that we occupied. I would not like to say positively that I had this conversation with Joseph Cain, but it appears so impressed on my mind; I am very sure it is so; I would not like to say so positively.

Did Joseph Cain to your knowledge ever own or claim to own the building you occupied or the ground on which it stood during the time you were there?

I think not; that is the way it looks to me.

Did you during the time you were there ever hear from any one that he owned or claimed to own that property?

I think not.

Who was the generally reputed owner of that property while you were there?

(Objected to as irrelevant and hearsay by Cain's counsel.)

I think it was generally reputed to belong to the estate of D. Richards, but I will remark that when I left I delivered the key to D. H. Wells.

Did you leave there during the lifetime of Joseph Cain?

I think we left a few days before he died; it may have been one or two weeks.

Can you tell how it was you delivered possession to Esq. D. H. Wells when you left there?

(Objected to as irrelevant by Cain's counsel.)

I cannot tell.

220 Cross-examination by Cain's counsel.

You say you paid the rent to Joseph Cain and when you so paid it you understood that Mr. Cain so acted for the estate of Willard Richards. What are your reasons for so supposing?

One reason was that this work for Richards' family done by Snelgrove was allowed on the rent; another reason, in settling with Joseph Cain I got the idea somehow from him that he was acting for the estate of Willard Richards.

Were not others supplied from the shoemaker's shop and from your

shop with work or material other than those you have mentioned, which went in payment for rent?

I do not recollect one case, there may have been.

How is it you recollect the other cases?

I think the reason why I recollect the other cases (that is, of Snelgrove) we were there in the shop.

Did you keep any book in which these transactions are recorded?

I kept a book, and kept accounts of transactions between Snelgrove and me, and between Cain and myself.

Now, in this book, to whom did you charge the shoe account of Joseph Cain, and the family of Dr. Richards?

That book does not show the transaction in detail.

All your settlements and business about the matter of rent was transacted with Mr. Cain, up to the time you left, were they not?

I cannot say; it looks to me that the last settlement I had was with D. H. Wells, for Mr. Cain, as Mr. Cain, for some time before his death, was unable to attend business.

Don't you remember there was a fence west of the building you occupied?

I do; I think there was.

Was it there when you first moved on to the premises?

I think it was.

About how far east of John Eddins' house was that fence?

I can't tell.

About how far west was it from the house you occupied?

I think now about four rods. It might have been more or less.

What is your age?

I am eighty-one.

You don't know that Mr. Cain ever did claim that property, do you?

No.

Did you ever hear him lay claim to any of it?

I think he claimed the piece his house was on and a little north of it.

Are you positive of that fact?

221 I would not like to be positive, but I think he did, as it is my impression now that he did point out the line a little north of his house.

You say that it was generally reputed that the house and land was the property of the estate of Willard Richards. How do you know that fact?

It was generally talked about and so understood at the time.

SEPTEMBER 10, 1872—10 a. m.

Continuation of Daniel Shearer's testimony.

Cross-examined by Cain's counsel:

Did not Joseph Cain get material from you other than those furnished by Snelgrove, which went in payment for rent?

I presume he did; whenever he wanted any whips or anything else for himself or others of me, they went on the rent.

Are there any charges of that sort on your books against M'r Cain, individually? and if so, read from your book such charges.

I presume the following charges went in liquidation of rent, viz: Joseph Cain d'r to two deer skins, $6; Joseph Cain d'r to one whip for Faust, $3.25; Joseph Cain d'r to cash, by Smith, $1; Joseph Cain, to four deer skins, $10; Joseph Cain, to paid Derger, $3.50; deer skins, $4.50.

There are other charges of this kind in your book, are there not?

Yes, I think there are; I also, on closer examination, find the following entries: "Paid Cain, for rent, $10." I paid this rent to Cain and charged myself with it in my account with my partner, when I should have been credited with it, I think. I afterwards discovered the mistake, and on the next page made the same entry to my credit. I also find another entry in these words: "Paid Cain, for rent, $4.50." Also, another entry: "Paid for rent, $2.50"; this is dated October 5th, 1855. Most of the other entries are within date. I discover also another entry: "Paid Cain, for rent, $10, dated October 3, 1855."

These entries all refer to the rent of the building you occupied on the Emporium lot, do they not?

I suppose they do.

Did you pay rent monthly?

Yes, that was the understanding; I was to pay ten dollars per month.

Re-examined by Richards' counsel:

You kept all your rent account for that building with Joseph Cain, personally, did you not?

I kept it all with him except the last item; after M'r Cain was taken sick, and could not attend to business, I had some settlement with D. H. Wells when I gave him the key, but do not know whether it embraced rent or not.

222 What were your reasons for keeping the rent account with Joseph Cain, personally?

Because I hired the building of him.

DANIEL SHEARER.

Subscribed and sworn to before me this 10th day of September, A. D. 1872.

D. BOCKHOLT,
Probate Clerk,
Per E. W. EAST, *Dep.*

NANNIE RICHARDS, being duly sworn on the part of Richards claimants, says:

Do you know where the building known as the Jennings Eagle Emporium now stands?

Yes.

How long have you known that lot?

Since 1848.

State, if you know, who first lived on that lot.

The Hinman family.

Who owned it at that time?

D'r Willard Richards.

Did he continue to own it or any portion of it up to the time of his death?

(Objected to as leading by Cain's counsel.)

Yes, sir; but he had disposed of some portion of the lot; don't know how much.

State, if you know, whether Joseph Cain lived on any portion of that lot at the time of D'r Richards' death?

Yes, sir.

At that time who lived on the lot north of Jos. Cain's house, and between that and Jennings' corner?

M'r's Braddock.

Was she a wife of D'r Richards?
Yes, sir.
How long did she live there after the doctor's death?
I don't remember; only a short time.
To whom did the premises she lived on belong?
To D'r Richards.
Who took charge of D'r Richards' business affairs after his death?
Joseph Cain.
State whether or not, subsequent to D'r Richards' death, you ever heard any conversation, in which Joseph Cain participated, in relation to the Eagle Emporium lot or any portion of it; if so, repeat that conversation as nearly as you can.
I heard a conversation in the house in which my sister and I lived; to my recollection it was that he, Joseph Cain, had an offer to lease a portion of the ground to build a store upon; he spoke in this
223 way: That he thought it best to lease it for the benefit of the family, as it would almost support them. This conversation was between Joseph Cain and my sister in my presence.
What piece of ground was it he talked of leasing?
The corner where the Eagle Emporium now stands.
Did he state who made him the offer to lease?
I am not positive, but think it was Langston and Kinkaid.
What family was it that Joseph Cain spoke of in that conversation?
Willard Richards' family.
State, if you know, whether he leased the property?
He did not at that time.
State if you heard any other conversation on that subject at that time or subsequently.
No particular conversation.
State, if you know, why he did not lease the ground.
He stated to us that President Young advised him not to do so.
Where did M'r's Braddock go when she left that lot?
She moved into the building in which the doctor died.
What was the cause of her moving, or do you know?
At Joseph Cain's request, that it could be rented to bring in means to the family.
Do you know whether or not Mr. Cain did rent that building after M'r's Braddock left it; and, if so, to whom?
To Daniel Shearer.
Who received the rent of that building?
D'r Richards' family received the rents in work. They received no money that I remember. It was received in shoemaking and mending chiefly.
State whether or not you, as a part of D'r Richards' family, had shoes from that source?
Yes; I received shoes for myself and children.
How long did you continue to receive rents?
I don't remember the length of time we continued to receive rents.
State whether or not you continued to receive work on rents to the time M'r Shearer left there.
The payments were stopped before Shearer left some short time; can't say how long.
Why were they stopped?
I don't know.
Do you know whether any of D'r Richards' family received any rents on that property any time after that?

Not that I know of.

Who was the next occupant after Shearer?

I don't know.

224 Who had possession and control of that property after that?

I do not know.

Who had control soon after that?

I know nothing about it after it passed out of M'r Shearer's hands.

State if you know whether or not M'r Cein ever owned or claimed to own that small house which M'r's Braddock lived in.

I don't know that he ever did.

How long did M'r's Braddock live in the house where the doctor died, and where did she go from there?

I think not longer than six months, and then moved north to Farmington.

At whose instance did she go, and for what purpose?

(Objected to as irrelevant by Cain's counsel.)

At M'r Cain's instance, and for the purpose of cooking for men working there. The men were digging out a foundation for a mill for D'r Richards' family.

Who was directing that work?

(Objected to as irrelevant by Cain's counsel.)

M'r Cain.

In what capacity was he acting while directing that work?

(Objected to as irrelevant by Cain's counsel.)

Administrator of the estate of D'r Richards.

Cross-examined by Cain's counsel:

What relation did you bear to D'r Richards at the time of which you have been speaking?

His wife.

Were you not only one of his wives?

Yes.

Were you No. 1?

I was not his first wife.

You were his sixth wife, were you not?

I do not know.

Was M'r's Braddock his first wife?

No, sir.

At the date of D'r Richards' death where did he live?

In the building west of the council house.

How far southwest?

Right on the next lot.

The council house was on the northeast corner of the next above where M'r Cain resided, was it not?

Yes.

How much did the doctor own, at the place you have mentioned?

I think he owned three lots at his death.

(Objected to as irrelevant by Richards' counsel.)

225 One of those lots was on the southeast corner next above the lot occupied by Joseph Cain, and immediately across the street from the Emporium corner, was it not?

(Objected to by Richards' counsel as irrelevant.)

Yes.

The other lot was on the northeast corner of the last-mentioned block, was it not?

The council-house occupied a portion of the corner, and these two lots were next to it.

Where did Langston and Kinkaid do business?

(Objected to as irrelevant by Richards' counsel.)

They had a little store south of the council-house lot and on the same lot.

Do you know whether Langston and Kinkaid united their business house from Joseph Cain's?

They did not.

What sort of buildings were on the corner opposite to the Emporium building, north, at the date of D'r Richards' death?

A small adobe house.

Did M'r Cain ever rent that building?

(Objected to as irrelevant by Richards' counsel.)

No, sir.

Do you know of M'r Cain ever renting any of D'r Richards' houses except the one out of which he moved, situated a little north of M'r Cain's house?

No.

Will you repeat again the conversation between M'r Cain and your sister?

He was in the house that my sister and I occupied, and was talking about this corner lot; he said he had a chance to lease it, and had been offered a pretty good price for ground-rent, and he thought it would be a good thing for the family; it would supply the family with clothing and groceries; this was about the amount of the conversation.

I wish you would try and give his exact language and the exact expression of Joseph Cain in referring to the corner lot which he had a chance to lease.

As near as I can remember, I have stated that he had had a chance to lease the corner lot, and it would be a great benefit to the family.

Was this not the only expression he made use of in designating the lot he had had an opportunity to rent?

I presume it was.

May he not have referred to the corner across the street, which belonged to D'r Richards?

He did not.

226 How do you know?

Because we had consented to let Levi Richards have that lot, and did not consider it ours at that time.

Is this the only reason?

I am positive he meant the lot on which the Emporium building now stands That corner was then unoccupied, and the most suitable for a store.

You say we had concluded to let Levi Richards have the Kimball corner. Who do you mean by we?

Doctor Richards' family.

About how many were there of Doctor Richards' family?

About twenty.

You say M'r Cain rented the little adobe house on the Emporium lot on which M'r's Braddock lived, for the benefit of the doctor's family. Will you state how you knew that fact?

Because he told us we could have our shoemaking done on the rent, and we did get it.

Who do you mean by us?

I mean Willard Richards' family.

How do you know that Jos. Cain told W. Richards' family they could get work so done on the rent of that house?

Because I heard him say it.

When did you hear him say it?

About the time he rented the house.

Don't you know that many of the family never got any shoes there at all?

No, I do not.

Do you know that they did?

No, I do not know it.

Did not M'r Cain furnish you and others of D'r Richards' family with other articles besides shoes and mending?

Nothing, that we got through him.

Will you try and repeat the exact words M'r Cain used when he told you you might have shoes on the rent?

He told us we could have our shoes made and mended in payment for the rent of the house he had rented.

Are you positive he used the term rent at all?

I am not positive as to the term used; but I know he gave us to understand he had rented it.

Is this not a mere understanding in your mind, without any reference to any language used by M'r Cain?

I do not remember the exact terms, but this was my understanding from his language; but his exact words I cannot remember now.

227 How do you know M'r Cain moved M'r's Braddock out of that house to rent it for the doctor's family?

Because I heard him speak of it to M'r's Braddock and another old lady who lived in the house with her. He told them if they would vacate the building they would rent it for a good price. This is the substance of what he said.

It was from hearing this statement that you say he moved the old ladies out to rent it for the benefit of the family?

Yes, sir.

You never heard M'r Cain use the expression that he wanted to rent it for the benefit of the family?

Something to that amount.

Did you mean especially the family of D'r Richards?

Yes.

On the corner owned by D'r Richards at his decease, across the street, north of the Emporium building, at the time of the conversation with your sister, what buildings were on it and where did they stand?

There was a little adobe house on it which stood north of Kimball & Lawrence's store.

There was vacant room south of that building at that time sufficient to build a large store, was there not?

Yes, there was.

Was there any fence running north and south through the Emporium lot during the lifetime of D'r Richards or Joseph Cain?

I can't remember any fence.

NANCY RICHARDS.

Sworn to and subscribed before me this 10th day of September, A. D. 1872.

D. BOCKHOLT, *Clerk*,
Per E. W. EAST, *Deputy*.

SEPTEMBER 10TH—10 a. m.

ANN LONGSTROTH, being duly sworn on the part of the Richards claimants, says:

How long have you lived in this city?

The next year after the pioneers came; I think in 1848.

Where have you lived all the time since?

On a portion of the lot I now live on, which is on the block the council-house is on.

Do you know where the Jennings Eagle Emporium stands?

Yes.

Who first owned the lot on which that building now stands?

D'r Willard Richards, so far as I have any information about it.

State, if you know, who first lived on that lot.

There were two log-cabins belonging to D'r Richards, brought
228 from the old fort, which were placed on that lot; a man by the name of Hinman, his wife and family, lived in them.

Where on that lot was the next building erected, and what kind of a building?

A little adobe house a rod or two from the east fence and a little more from the north fence.

Who first occupied that building?

As far as I can recollect the log houses were pulled down and Hinman moved into the adobe house.

Who occupied the adobe house after Hinman?

It was taken as a whip factory by Shearer.

State, if you know, who occupied that building at the time of D'r Richards' death.

M'r's Braddock and her daughter lived there, but I can't remember whether they were there at D'r Richards' death or not; Joseph Cain also lived there at one time, but I can't say before or after M'r's Braddock.

What was your husband's name?

Stephen Longstroth.

Is he living or dead?

He is dead.

State whether or not he ever owned any portion of the lot on which the Eagle Emporium now stands.

(Objected to by Cain's counsel as irrelevant.)

Yes, he did.

How much did he own, and from whom did he get it?

(Objected to as irrelevant by Cain's counsel.)

He owned six rods front and ten rods back, and got it from Willard Richards.

What portion of the lot was that he got?

The west portion west of the Eagle Emporium.

Do you know the paper presented to you, marked "Exhibit B," and the signature subscribed thereto? If so, state what it is, and whose signature.

It is the deed, or transfer, from Willard Richards to my husband of the land described therein, and the signature is that of Willard Richards.

"Be it known by these presents that I, Willard Richards, the just, true, and rightful claimant and owner of possession of lot 6, in block 69, containing one and a quarter acres, as plotted in the Great Salt Lake City survey, in Great Salt Lake County, in the Territory of Utah, do, for and in consideration of the sum of one thousand dollars, to me in hand

paid by Stephen Longstroth, the receipt whereof is hereby acknowledged, sell, release, quitclaim, and transfer all my right of
229 claim, interest, and possession of and to the west sixty rods of the aforesaid premises to the said Stephen Longstroth, his heirs, assigns, this first day of March, in the year of our Lord one thousand eight hundred and fifty-three (1853).

"WILLARD RICHARDS."

Acknowledged before me.

THOMAS BULLOCK,
Recorder Great Salt Lake County.

(Endorsed:) Willard Richards to Stephen Longstroth, transfer of part of lot 6, block 69, plot A, Great Salt Lake City Survey, recorded transfer book C, page 708, May 21st, 1867. Edwin D. Woolley, recorder, Great Salt Lake County.

EXHIBIT B.

Exhibit B was in testimony, and asked to be attached as part of the testimony of this witness.

(Objected to by Cain's counsel on the ground that the exhibit is incomplete, because it is a mere declaration of Willard Richards in writing, derogatory to the title of M'r Cain, and made while he (Cain) was in possession, and that no proper foundation has been laid for the admission of any such testimony as is contained in Exhibit B.)

When did Stephen Longstroth get possession of that land, and who gave him possession?

Dr. Richards gave him possession immediately after the deed was executed.

State whether or not you heard any conversation between Dr. Richards and Mr. Longstroth about that lot at the time the latter got that six rods; and, if so, state what the conversation was.

(Objected to as being irrelevant and hearsay by Cain's counsel.)

I remember it well; the doctor took me and my husband down to the southeast corner of that lot. At the time we were looking at the lot and talking about how much we were to have, Dr. Richards said the ground we are on I originally intended for an orchard, but some day a road will be needed, but I have reserved a road from the southeast corner east to Main street, but if it (the road) on our ground should be opened we would be well paid for it. By the southeast corner I mean the southeast corner of the piece we got, and it was on this corner we were standing when this conversation took place.

What consideration did your husband give for that piece of land?

In the beginning, the doctor wanted the north end of our lot, the one I now live on, for an orchard, it being near his house. He wanted ten rods of our lot for six of his, but I objected to it. We then exchanged eight rods by ten on the north end of our lot for six by ten of his.

Were there any graves of any of Dr. Richards' family on the piece of ground M'r Longstroth let him have in this exchange?

230 No, there was not.

State whether or not, at the time you got the six rods, there was any fence running north and south through that lot; and, if so, state where it was as near as you can.

Yes, there was a fence; it was some distance east of the east line of the six rods, but I can't tell just how far.

What kind of a fence was that?

A board fence, I believe; there was a pretty good board fence on the front.

Who built that fence?

I don't recollect.

Do you know where John Eddins' house stood?

I do remember the house, but don't remember its position exactly.

On which side of the fence that you have described as running through the lot was Eddins' house?

On the east side.

At the time M'r Eddins lived there, do you remember any fence east of his house, running north and south through the lot?

I do not.

Did your husband continue to own all that six rods of ground until his death?

No, he did not.

How much did he dispose of, and to whom?

(Objected to as irrelevant by Cain's counsel.)

Two rods on each side; he sold the east two rods to Lorin Babbit, and the west two rods to Joel Terrel.

Who owns or has possession of the remaining two rods?

I have, and rent it out.

Cross-examined by Cain's counsel.

What is your age?

I am in my eightieth year.

Dr. Richards wanted more of the lot which your husband exchanged with him, did he not?

Yes, he wanted ten rods square, and we exchanged him only eight by ten rods.

Were not some members of his family buried on the portion which he wanted but did not get?

No, sir; there was not.

How much of the doctor's lot did he offer you for yours?

He offered all he had fenced for an orchard.

Did he not offer all he owned of that lot?

All that was under fence.

Where did the east fence of that orchard ground run or stand?

231 It was near to where John Eddins' house and near where the log house was first put on, but I can't state exactly.

Joseph Cain lived on a portion of the Emporium lot, did he not, at the time of the conversation with the doctor which you and your husband had at the southeast corner of the six rods?

His building was up, and he must have lived there at that time.

How far did the road which the doctor said he had reserved extend?

It extended up to the fence to Eddins' stable.

Don't you remember of Joseph Cain having a stable there also?

No.

Do you remember of Joseph Cain's having a fence west of his house?

No, sir.

Did not Joseph Cain occupy that house until his death?

Yes; he did.

Has not your age impaired your memory?

No, it has not, except in trifling matters; not in matters which transpired twenty years ago.

Have you not heard Heber John Richards talk a great deal about this case lately?

No, sir.

Have you had any talk with any one recently about this matter?

I have had different ones come to me to know what I knew about it.

Have not those persons, or some of them, told you what they knew about it?

They have asked me what I knew, and I told them, and they made their statements, which were the same as mine—we agreed.

Have not you and Willard Richards talked about this matter recently?

No; he asked me about some debts.

Did he not tell you how he regarded the matter?

He did not.

Have you talked with any one about the location of the east fence you spoke about?

I have been asked how the fence was built.

Have you heard any one say where it was?

Yes; I heard John Eddins say where it was, and that he went to the the canon for the timber.

When was it you heard John Eddins say so?

A few days ago; probably a week.

Where was he at the time?

At my house.

Who was with him?

No one.

23[illegible] How did you come to speak about it?

There was a piece of an old post lying close by where we were talking, and I asked him if he knew anything about that; he said yes, it was a post put into the first cow-yard we had put up. He asked me if I knew what kind of a fence was north of the piece of ground you got from Dr. Richards; I said yes, it was a board fence, and he replied, if you remember that you remember all the fence.

Did he not tell you at that time that there was a fence west of his house running south to Pixton's line?

No, sir.

Re-examined by Richards claimants' counsel.

Did you ever, during the time Joseph Cain lived on that lot, hear him say anything about the extent of his land; if so, state what he said?

(Objected to as leading, and not in rebuttal, by Cain's counsel.)

He was in the north room of his house. He said if he had more room on the north side of his house he would build a store-house, as it would bring an income to his family in case he was sent on a mission.

State whether or not there were graves of some of Dr. Richards' family near the piece of ground he let your husband have?

Yes; there were some on the doctor's land near by, some two or three rods distance, perhaps.

You say the doctor offered all he had of that lot to you, provided he could get what he wanted of you. Will you explain what you mean by all he had?

I meant all that was within the fence.

Was there any fence around the portion east of the lot you got?

I don't remember, except along the street there was a fence running from the northeast corner of our lot down by Joseph Cain's house.

Do you remember what you have stated about running through that

lot near John Eddins' house, yourself, and independent of what any one has said to you about it.

Yes, sir; I remember it of myself.

ANN LONGSTROTH.

Subscribed to and sworn before me this 11th day of September, A. D. 1872.

D. BOCKHOLT, *Clerk*,
Per E. W. EAST, *Deputy*.

Mrs. EMMA BULL, being duly sworn, on the part of the Richard s claimants, says:

How long have you resided in this Territory?

I have resided in this city since October 13, 1863.

Where did you reside first, and for how long?

I had no settled house for one week. On the 17th I went to live with Joseph Cain, and remained there until the following August.

233 Did you, during the time you were living at M'r Cain's, have any conversation with him about the extent of his ownership or possession where he lived? And, if so, state what that conversation was, and where it took place.

We had such conversation; it took place soon after my arrival at his house; I can't be certain as to the date, of course; I am not certain it is the exact conversation, but it was to the effect that D'r Richards owned the premises adjoining him on the north; that he himself owned the premises he lived on. I never had any other impression at any time from any person.

How did this conversation come about?

He took me out and spoke of it in general terms without any special reason, as if he wished me to know he owned the place where he lived; we were outside of the house at the time.

State whether he told you precisely where his north line was.

He did not.

Was there any house to the northward, between M'r Cain's and the corner?

Yes.

Describe them.

I cannot be positive whether there was more than one house; there was only one roof; it was a small concern, and I was in it several times.

Was that house included in the premises which M'r Crain told you belonged to D'r Richards?

Yes.

Who lived in that small house at the time you went to live at M'r Cain's?

Members of D'r Richards' family.

Give their names.

They were called M'r's Braddock and M'r's Franklin.

Did they reside there all the time you lived at M'r Cain's?

I think so; the greater part of it, I am sure.

When did D'r Richards die, or do you know?

In the latter part of March, 1854.

Did those wives of his continue to reside in that little house after his death?

I am not sure, but am of the opinion they did.

Had M'r Cain any outbuildings on that lot? And, if so, state where they were located with reference to his buildings, and what they were.

I have no recollection of any, except a pig-sty and back-house. The latter was west of his house, I believe on the north line. The pig-sty, I think, was north of that.

Do you remember any stable or cow-house?

I do not.

234 Do you know whether M'r Cain kept any team or cow while you lived there?

I do not. He must have had a stable, as he kept the mail-carrier; but I have no recollection where the stable was.

Did you while there ever know M'r Cain to occupy for any purpose any portion of that lot north of the north line of his dwelling?

No.

Did you ever at any time while there hear him claim to own any ground north of his house?

No.

Did John M. Bolwinkle live at M'r Cain's while you were there?

Yes.

What was his employment at the time?

Did chores about the house, chop wood, etc.

Was he generally around the house?

The first part of the time he was.

Cross-examined by Cain's counsel:

You say you went to live with M'r Cain on the 17th day of October, 1853; how do you know that was the date?

Because I came in on one Monday and went there on the next.

How long after you were there was it before this conversation between you and M'r Cain occurred?

Soon after; I think within a month afterward.

Where were you when it occurred?

Standing out at the back door in the yard.

How far from the door?

I can't say exactly; a few steps.

What side of the door were you on, the right or left?

Nearly opposite the door.

Was there any other person with you?

No.

What time of day was it?

I can't remember.

Was it in the night or day time?

In the day time.

How do you know?

Because I was never out with M'r Cain at night.

Where had you been before you went out there?

In the general sitting-room of the family.

Who else were in that room besides yourself and M'r Cain?

I have no special recollection, but I suppose M'r's Cain and the family.

What were you talking about in there?

I don't remember.

235 You have no recollection of any conversation?

No; nothing special.

Can't you remember something that was said or something that was done? Tax your memory and see if you can't.

I have no recollection of anything special.

Have you any recollection of anything not special?

No, not at that time.

How long did you remain in that room on that particular occasion?

I don't know.

When you left it what caused you to do so?

M'r Cain desiring to show me the extent of that portion of his property.

You have just stated you had no recollection of anything said or done in that room. How do you recollect that was the reason?

From the fact of his taking me out for that purpose.

If you have no recollection of anything that occurred in the room, how can you know that he took you out for that special purpose?

From the fact that that was the communication he made to me after we went out.

Did you both go out together?

I do not remember, precisely.

But you are certain you went out for that purpose?

I do not remember, especially, whether we went out for that purpose, but I am certain as to the information and time of the conversation.

SEPTEMBER 12 (10 a. m.), 1872.

Cross-examination of M'r's Emma Bull continued:

At the time you lived with M'r Cain, do you remember there being a fence south of his house, on the line of M'r Pixton's?

I do not remember anything about that.

Don't you remember of there being a fence on the east side of the Emporium lot, on the line of Main street?

Yes.

Did not that fence run the whole length of the east side of the lot?

It run only from M'r Cain's house to the Emporium corner.

What sort of a fence was there running from the corner west, on the north line of the lot?

I think it was a pole fence.

Don't you remember of there being a fence near the center of the lot, running north and south, back of M'r Cain's house?

Yes; a pole fence, I think.

Do you know where John Eddins' house stood?

236 Somewhere back of D'r Richards' house, but I don't know the exact locality.

On which side of M'r Eddins' house was the fence of which you last spoke?

I can't say, but I think on the west side.

Don't you remember of there being a pair of bars east of Eddins' house near that fence leading out into F'rst South street?

Yes.

Was there not a wagon-way through those bars and through which wagons passed into the vacant space north of M'r Cain's house?

Yes; there was a pair of bars which were occasionally let down when wagons came in.

About how far from those bars was the pole fence which you say ran north and south back of M'r Cain's house?

I have no distinct recollection whether there was such a fence. As I said before, I think there was such a fence; but am not able to give an opinion about the distance.

Did not M'r Cain use those bars as a passage way to haul wood to his wood-pile?

I don't remember.

Don't you remember of M'r Cain's having wood-piles back of his house?

Yes.

You have stated there was a pig-sty west of M'r Cain's house; was it not near to a fence back there?

I don't remember.

You remember, however, there was a sty there. What was its dimensions?

I cannot tell.

Do you remember of there being a meat-shop south of M'r Cain's house?

I don't remember.

Was M'r Cain's house on the line of Main street?

Not on the line of the fence exactly, but a little back.

I wish, again, to revert to the conversation you had with M'r Cain. Will you again repeat what that conversation was, in exact terms, as near as you can?

He merely referred to the doctor's being his next-door neighbor, and owning the adjoining lot.

At the time of that conversation D'r Richards had a house on a lot west of M'r Cain's, near to where Eddins afterwards built, did he not, and which the doctor afterwards sold to Longstroth?

I don't know anything about that.

237 You say that M'r Cain, in that conversation, merely referred to the doctor's being his next-door neighbor, and owning the adjoining lot. Was that all he said?

That is all I remember.

I wish you would refresh your memory so as to be as positive as you can.

That is as near as I can remember.

The conversation, you say, was general?

Yes; the conversation was one of a general character and very short.

How long were you engaged in this conversation?

Only a very short time—a minute or two.

What was it that gave rise to a conversation on the subject of D'r Richards' ownership of that property?

I don't know; I suppose it was a common-place; there was nothing special to cause it.

How is it that it is so positively fixed in your mind at this distant day, and you can remember nothing else that occurred in relation to that conversation?

Because there was nothing else that did occur.

There is a casual conversation made about nineteen years ago; you remember the single remark of M'r Cain that D'r Richards was his next-door neighbor and owned the adjoining lot, and that is all that occur'ed at that time?

That is all I can remember.

At that time D'r Richards owned, and he or a portion of his family lived on, the lot north across the street from the Emporium lot, now known as the Kimball & Lawrence corner?

Yes; that is so.

May not M'r Cain, from anything you know to the contrary, have referred to that lot?

No, sir; positively no.

What reason have you for being thus positive?

Because I never had any other impression of this point since that conversation occurred; since, whenever I have thought about it, I have had that impression.

Whatever impressions you may have had arose from the use of the language by M'r Cain, which you have just quoted, did they not?

Not altogether.

What else has influenced your impression?

The fact of D'r Richards' family living there.

How often have you thought over this conversation since it occurred?

Not very frequently; there was no occasion.

When, to your knowledge, did the first occasion arise?

When this contest commenced.

238 Had you ever thought over that conversation until that time?

I do not remember.

Who called your attention to this controversy first?

General rumor.

Who next?

I think my husband, but I am not sure.

Have you not conversed with Brigham Young about the matter, or George Q. Cannon?

No, sir.

Who, then, have you conversed with?

Heber John Richards first called on me and asked me what I knew about it.

Did not you and him fix up the story which you have repeated?

No; we did not. I did not come here to perjure myself.

You have said M'r Cain took you out of the house to show you his premises; now, why did he do that?

I don't know, unless it was I was a newcomer.

What did he say to you before going out?

I don't know.

You have said there were others in the room at the time?

I think so; there was no privacy about our going out.

Did he go out first, or you?

I don't know.

You say you don't remember of his saying anything which led you to go out; do you remember of his beckoning or nodding to you?

No; not that I remember.

How can you state, then, on your oath that he took you out to show you his lot?

I have not so stated; I have only stated the conversation.

What conversation? Repeat it again.

D'r Richards, my next-door neighbor, owns the lot adjoining mine. These were his words, as near as I can remember, and the import of them.

Are you positive he used the words, "he owns the lot"?

Yes; I am.

How long after this conversation was it before you left M'r Cain's?

This conversation occurred immediately after I went to reside at his house. Left there near the beginning of the August following.

Why did you leave?

(Objected to as irrelevant by Richards' counsel.)

I suppose because I wanted to and they were willing.

Did you not leave on account of a quarrel with the family of M'r Cain?

It might be termed one, I suppose.

239 With what member of the family was it that that "what might be termed a quarrel" took place?

(Objected to as irrelevant by Richards' counsel.)

I decline answering, as the matter was buried at that time, and we have been on speaking terms ever since, and I do not wish to rake it up again.

Do you remember whether the statement of the conversation with M'r Cain, as made by you to-day, is the same either in language or substance which you made on your examination-in-chief?

It is the same in substance.

Re-examined by Richards' counsel:

From anything that may have ever occurred between you and M'r Cain's family, or any member of it, do you retain any anxious or unfriendly feeling toward them now?

(Objected to by Cain's counsel because question by Cain's counsel on that subject was not answered.)

None at all.

Your statement in testimony have not been any way influenced by any such occurrence?

Not in the least.

Did you ever have any conversation with M'r P. L. Williams in relation to this case, and how often?

Only once I did.

EMMA BALL.

Subscribed and sworn to before me this 12th day of September, A. D. 1872.

D. BOCKHOLT, *Clerk*,
Per E. W. EAST, *Deputy*.

ELIZABETH PIXTON, being duly sworn on the part of Richards' heirs, says:

How long have you lived in this Territory, and where did you live the first year of the time?

I came here in 1848, and lived on the lot south of the Emporium lot, in Salt Lake City. From that time until May, about twelve years ago, I believe, on that lot.

Were you acquainted with D'r Willard Richards and Joseph Cain during their life-time?

Yes.

Who first lived on the Emporium lot?

Father Hinman; I don't remember his name.

State what time he went there, and how long he lived there, as near as you can.

I know he moved up there shortly after I did, but how long I don't remember. I think he lived there about two years.

What kind of a house did he live in then?

240 He first lived in two log rooms, and afterwards built and lived in an adobe house.

At the time M'r Hinman left there, what improvements were on that lot?

There was a fence between his house and ours and the two log rooms, and the adobe house, and there was a fence on the east side, up to the corner. There was a pole fence on the north line from the corner, extending some distance from the corner; I don't know how far. Whether there was any other fence at the time Hinman left, I do not remember.

During the time of which we have been speaking, who was the owner of that lot?

Willard Richards.

Who next lived there after M'r Hinman left?

Joseph Cain.

In what year did he live there or move there?

I can't remember; but his son Joseph was a nursing baby at the time.

In what house did he first live?

In that adobe house which Hinman built.

About how long did he live there, and where did he live after he left that house?

I can't remember the time he lived there; some length of time; and after then he moved into a house he built south of this one, and lived there till his death.

Where did you first become acquainted with M'r Cain?

In the old fort.

State whether or not you were apprised of his intending to come on the Emporium lot before he moved there.

Yes, sir.

Who so apprised you?

Willard Richards.

(Answer objected to by Cain's counsel.)

State whether or not you had any conversation with Willard Richards about that lot in connection with Joseph Cain's coming there; if so, state when that conversation took place, and repeat it as near as you can.

(Objected to by Cain's counsel as hearsay declaration of the party in interest.)

I had such conversation in my house. He said I should have some neighbors shortly, as Joseph Cain and family were going to move up there on the Emporium lot. He thought he should let him have a building place between the house Father Hinman built and the twenty
241 feet left for a road back of his premises. I remember nothing further at this time.

How long was this before Mr. Cain moved on that lot?

A short time; not more than a week.

Previous to this conversation had you known anything about the alley way of which Dr. Richards spoke? And if so, state what it was.

From the first of my going I understood from the doctor's conversation that there was to be an alley way there.

Describe particularly where that alley way was to run?

It was to run as far back as the place of John Eddins' from the front street to the back of the lot. The alley was to occupy twenty feet on the south side of the lot.

State how Mr. Cain's new house stood with reference to this new roadway.

The rooms he first put up were twenty feet back from the line of East Temple street. It was north of the space left for the roadway.

Had Mr. Cain any outbuildings? If so, state where they were situated.

Yes, they were back in a line with his house.

Do you know whether he had any stable?

I don't remember that Mr. Cain had a stable.

At the time Mr. Cain moved into his new house, and before that, was the space south of the house used for any purpose, and if so, for what?

There was a butcher shop there.

Who occupied that?

Nathaniel Jones first occupied it; after he left there was another shop a little further back from the front, occupied by Father Topham.

What sort of structures were these shops?

The first one, I think, was a slab shanty. I don't remember as to the second; it was only a temporary structure.

I wish you would fix the time, as near as you can, when the first meat shop was established there, and also the time when Mr. Topham left.

It has been so long since, I cannot tell.

Do you remember when the first building of a permanent nature was put up on the space occupied by those shops? If so, state by whom built, and at what time, if you can.

I don't remember the time exactly, but think Mr. Samuel Richards put them up some eight years ago—it might have been more or less.

Do you remember what buildings, if any, were there at the time of Mr. Cain's death?

I don't remember; I can't remember anything being between his house and ours.

242 Who occupied the small adobe house after Mr. Cain moved out?

Mrs. Braddock and Mrs. Franklin.

About how long did they live there?

I am not positive; I think they lived there as much as two years.

State, if you know, whether they lived there at the time of Willard Richards' death.

Yes, they did.

State what relation they were to Dr. Richards.

They were the doctor's wives.

Do you know whether John Eddins ever lived on a portion of that lot, and if so, on what portion?

Yes, he lived on the west end of it; I don't know whether it extended to the extreme west line or not.

State whether or not there was any fence running north and south through that lot or the east side of Mr. Eddins' house.

No, not while he lived there.

Previous to his living there do you remember of any fence running through that part of the lot?

No, sir.

At the time Mr. Eddins lived there, who owned the portion of that lot lying east of his piece?

Willard Richards.

Did you ever hear Joseph Cain say how much he owned of that lot, or whether he owned any of it?

No, sir, I never heard him say.

During Joseph Cain's lifetime state whether or not you ever heard from any source that he owned the east half of the lot.

No, sir.

During that time do you know whether or not that corner was known by any particular designation?

It was known as the doctor's corner; it was known as the doctor's piece of land.

Do you know of its ever having such designation as Cain's corner?

No, sir.

During Willard Richards' lifetime who was the generally reputed owner of that corner?

Willard Richards.

Do you know John Balwinkle?

Yes, sir.

When and where did you first know him?

While he lived with Joseph Cain; I cannot tell the time exactly; somewhere about the time Mr. Cain lived in his new house.

State whether or not you saw him frequently.

Yes, frequently.

243 What seemed to be the nature of his employment during the early portion of the time he lived at Mr. Cain's?

To do chores and go errands.

Were you intimately acquainted with Dr. Richards?

Yes, sir; I was.

From your acquaintance with him can you state whether or not he would be likely to discuss business matters of a private nature in the presence of persons not interested with them?

No, sir; he was very reserved.

Cross-examined by Cain's counsel:

Which one of the applicants for the Emporium lot would you see succeed in getting the title of it?

(Objected to by Richards' counsel as incompetent and irrelevant, and not proper cross-examination.)

It don't matter with me which succeeds. I don't care anything about it.

Have you been talking with any person since court adjourned about the west fence?

No, sir.

Don't you remember saying in your examination-in-chief that you had no recollection of any fence except the north fence, the south fence, and the east fence?

I don't remember.

Have you ever talked with John Eddins about the location of those fences?

No, sir.

Who told you there was no fence east of John Eddins' house?

No person; I was there to see it.

Don't you know of there being a pair of bars on the east of Eddins' house, leading from First South street to the Emporium lot?

No.

If there had been a pair of bars there you would have remembered it, would you not?

I don't know as I should.

If there had been a fence running east of Eddins' house, running north and south, do you think you would remember it?

Yes; I think I should.

Why do you think you would remember one of these fences and not the other?

Because John Eddins frequently had sickness in his house, and I frequently went across.

In going to Eddins' would you pass out of your back door and go west of Cain's house?

244 I passed out of my south door west, around the corner west of Mr. Cain's house.

Would you pass between M'r Cain's house and his stable?

I don't think he had any stable.

Had he at any time during his life a stable back of his house?

I don't think he had.

If he had had, in going to M'r Eddins' on the route I have described, you would have had to pass near the stable, would you not?

Yes, sir; but I don't think there was any.

If there had been any such stable there, would you not have remembered it?

I think I should.

Would you not be likely to have had a more distinct recollection of the stable than the fence?

No; I can't say I would; I remember there was no fence on the east side of John Eddins' house at the time his wife was sick, and don't think there was one.

Was there any fence there at any time during the life of Joseph Cain?

I don't remember.

May there not have been one?

I can't tell you.

You say D'r Richards was not communicative about his private business; he never told you he owned any of the Emporium lot, did he?

Yes; he told me he owned it.

Did you ever hear him so designate it after Joseph Cain lived there?

Yes, sir; he did, in that little house.

You say Willard Richards owned that lot; how do you know that fact?

Because he owned it as he owned other lots. He took it up and he called it his lot. I know that while M'r's Braddock lived there they cultivated the part near the little house for a garden.

Don't you know the ground about that house was the bed of City Creek and so gravelly that nothing would grow there?

No, sir; I don't; some portion of it was very gravelly, but they did raise vegetables on it.

Do you know that D'r Richards never did sell that lot to Joseph Cain?

No, sir.

You say that he did sell you a portion of that lot?

I said he told me he was going to let Joseph Cain have a building place.

Do you know whether he ever did let him have one or not?

All I know is he came and built on the lot and lived there.

245 You don't know by what arrangement?

No.

Willard Richards had the giving away of all the lots in that vicinity, did he not?

Yes.

You and your husband had your lot given to you by him, had you not?

Yes.

How much was in your lot?

An acre and a quarter.

Before the doctor gave it to you, it belonged to him the same as the Emporium lot, did it not?

Yes; I suppose so.

For anything you know contrary, may not the doctor have given M'r Cain the Emporium lot in the same manner he gave you your lot?

I don't know anything at all about that.

Were not the meat-shops in the alley-way built while the doctor was living?

I don't remember, but think they were built while he was living.

Re-examined by counsel for Richards' heirs:

After D'r Richards gave you your lot, did he keep any of his folks living on it, and was it still called the doctor's lot?

No; and he never had any of his folks living on it.

ELIZABETH PIXTON.

Sworn to and subscribed before me this 14th day of September, A. D. 1872.

D. BOCKHOLT, *Clerk*,
Per E. W. EAST, *Deputy*.

SEPTEMBER 16TH, 1872—10 a. m.

AUGUST CLAYTON, being duly sworn on the part of Richards' heirs, says:

How long have you resided in this Territory?

Since the year 1848, and have resided in Salt Lake City ever since.

Do you know where Jennings' Eagle Emporium building now stands?

Yes, sir.

State when and how long she lived on that lot.

As near as I can recollect, she moved there in the fall of 1852, and resided there until some time in 1854.

(Question and answer above objected to on the ground of irrelevancy by Cain's counsel.)

What relationship did M'r's Braddock bear to Willard Richards, deceased?

She was his wife.

246 State whether or not you ever lived there with your mother, and, if so, how long and at what time.

It must have been near the beginning of 1853 when I went there, and I remained there about three or four months.

At that time who was the owner of the premises where your mother lived?

D'r Willard Richards.

State whether or not you were acquainted with the premises after you left there.

I was, till my mother moved away.

State whether or not, while she lived there, any portion of that lot near her house was cultivated, and, if so, by whom.

There was some of it cultivated by my sister in the summer of 1853.

In what direction from the house in which she lived and how far from it was the ground so cultivated?

West and north; it was nearer on the north than on the west.

At whose instance did your mother move into that house?

D'r Willard Richards'.

Were you acquainted with Joseph Cain at that time?

Yes, sir.

During the time your mother lived there, did you ever hear him claim to own the premises where she lived?

No, sir; I never heard of such a thing.

Did you during that time ever hear of such a thing from any one?

No, sir.

At whose instance did your mother move away from that building, and for what?

At the instance of Joseph Cain, who wanted to rent that building to get things for the family.

What family do you mean?

Willard Richards' family.

Do you remember John Eddins living on a portion of that lot? If so, state where his house was.

He did, and lived west of the house I lived in with my mother.

State whether or not there were at that time any fences on that lot?

I don't remember whether there was any fence on the east side; I know there was one on the north side.

At the time M'r Eddins lived there, state whether or not there was any fence running north and south through the lot between his house and the one in which your mother lived.

I don't remember any. I think I should if there had been, as I frequently went to M'r's Eddins' house, passing through the lot.

About how far was M'r Cain's house from your mother's?

I can't say how far; only a short distance.

247 Which way did the door of your mother's house face in reference to M'r Cain's?

Mother's door faced the end of M'r Cain's house.

Did you know John M. Bolwinkle at that time, and where did he live, if you know?

I knew him; he lived at that time with M'r Cain.

State whether or not you saw him frequently when you were at your mother's.

Yes; very frequently.

What seemed to be the nature of his employment during that time?

I can hardly say, unless that he was maid-of-all-work, washing dishes, washing clothes, peeling potatoes, etc.

State whether or not he was most of the time about M'r Cain's house.

Yes; he used to do most of the work outside of the back door, and I had a chance to see him.

Did your mother live there after D'r Richards' death; if so, how long?

D'r Richards died some time in the spring, and mother lived there till some time in the summer following.

Cross-examined by Cain's counsel:

You say you were well acquainted with Joseph Cain; did you ever talk with him or hear him talk in relation to the Emporium lot, or any portion of it?

No, sir; I never heard him say anything about it.

Did you ever hear him say anything about renting?

No, sir.

You never heard him say anything whatever, did you, on the subject of rent, or anything about the ownership of said lot, did you?

No, sir.

How do you know D'r Richards owned that portion of the lot on which your mother lived?

Because he moved my mother into that house, and they were called always D'r Richards' premises.

For anything you know of your own positive knowledge, may he not have rented it from Joseph Cain?

I don't know anything of my own positive knowledge about it.

How do you know Joseph Cain moved your mother out to lease the house for D'r Richards' family?

I only know from what mother told me at the time and since that time.

What were the exact terms used by your mother in telling you this? Repeat them as near as you can.

248 The said Joseph Cain wanted her to vacate the house as he had a chance to rent it to furnish things for the doctor's family.

You say that your mother, M'r's Braddock, was the wife of D'r Richards at the time she lived on the lot. Why was she called M'r's Braddock then?

She was not his first wife, and it was not usual at that time to call an elderly lady by her husband's name if she had been married before, excepting the doctor, who always introduced her as M'r's Richards.

Did not John Bolwinkle work in the Deseret News office, and also in the post-office?

I never heard of it, and never knew of it.

Who did you ever hear say that the Emporium lot belonged to D'r Richards?

I heard him speak of it.

Was it not in a very early day you heard him thus speak?

It was at the time my mother lived there, and before that time.

It was at the time your mother first lived there you thus heard him speak of it?

I heard him speak of it then, and afterwards.

Repeat the language the doctor used.

I don't know; I heard the doctor say so, but I heard mother say he told her to move on the other lot.

AUGUSTA CLAYTON.

Subscribed to and sworn before me this 17th day of September, A. D. 1872.

D. BOCKHOLT, *Clerk*,
Per E. W. EAST, *Deputy*.

SEPTEMBER 20TH, 1872—10 a. m.

HARRIET EDDINS, being duly sworn on behalf of Richards claimants, says:

Do you know where the Jennings Eagle Emporium building now stands?

Yes.

Did you ever live on any portion of that lot, and if so, on what part of it, and when was it you lived there?

I lived on the west side of that lot, in 1854.

Will you fix the time, as near as you can, when you went there, and also when you left?

We were there about eighteen months, I believe; we were there in the fall of 1853 and left in May, 1855; my eldest child was born there in 1854.

Which way was your house from the northeast corner of the lot where the Emporium building now stands, and about how far?

Our house stood due west from the Emporium building, and I can't remember the distance, but think it was on the west side of the lot.

249 State whether or not there were any houses east of yours on that lot; and, if so, who lived in them.

There was a small adobe house on the east side, and two of Willard Richards' wives lived in it; there was no other house that I remember.

Did you know Joseph Cain at that time, and where did he live?

He lived south of the house in which the doctor's wives lived.

Did you know whether or not his house was on any portion of that lot?

I could not say.

In what kind of a house did you live, and on which side did you enter it?

We lived in an adobe house, and entered on the east side.

State whether there was any fence along the north line of that lot while you lived there; and, if so, state what kind of a fence, if you remember.

There was a very poor pole fence on the line of the street running east and west.

State whether or not while you lived there there was any fence running north and south through the lot between your house and the little adobe house that D'r Richards' wives lived in.

There was no fence there.

Are you certain of this? And, if so, why?

Yes, sir; I am perfectly certain about it. One reason is I had to travel over the ground so often, some five or six times a week.

In going to M'r's Cain's, did you usually go through the lot?

Right across the lot.

State whether or not there was any fence running north and south through the lot on the west of your house.

Yes.

How far was it from your house?

About wide enough for a wagon to drive through; it might have been wider.

What makes you remember this fence?

Because I used it as a clothes-line; it was the only place I had to hang clothes on.

State whether or not there was at that time any log house east of yours on that lot.

No, sir; there was not.

During that time did a sister of your husband, who afterwards married E. B. Tripp, live on that lot in a log house?

No, sir; it was with me she lived all the time she lived on that lot.

By what name were those wives of D'r Richards, who lived in the little adobe house, known?

M'r's Franklin and M'r's Braddock.

250 Did they live there at the time you went there to live?

Yes.

State whether or not they were there at the time of D'r Richards' death.

Yes.

Cross-examined by Cain's counsel:

Your husband and you have had considerable talk about there being a fence running east and west through that lot, have you not?

No, sir; we had no occasion—we both knew that there was no fence there.

Did he not tell you there was no fence there, recently?

No.

Do you and your husband live together in the same house?

Yes.

Has he been absent recently any considerable time?

No, he has not.

For the last month he has habitually taken his meals with you at the same table, has he not?

Yes, sir.

You knew he had been a witness in the case, did you?

Yes.
Did he tell you about it?
He only said that he had been a witness.
What did he say to you in relation to it?
All he ever asked me was if I knew where the pig-pen stood.
What did you say to him?
I told him where it stood.
Did he ask you after he had been here and testified?
Yes.
Except this, you had no farther conversation with him in relation to this case?
No.
Are you positive of that fact?
Yes, I am.
Your memory is very poor, is it not?
It is poor in relation to recent events, but very good in relation to events of longer standing.
Don't you consider it extraordinarily good as to old occurrences?
Yes, I do.
Have you not also wondered at yourself how you could forget things of recent date?
Yes, I have.
How old are you?
I was forty the 4th of June last.
251 Your husband told you there was a fence on the west side of the house, did he hot?
No, he asked me if there was not a fence on the west side and what kind. He said it was a board fence, was it not.
Did he not also ask you whether you remembered anything about the east fence?
No.
When your husband asked you if that fence on the west side was a board fence, what did you say?
I said yes, it was a board fence.
What did he say then?
Nothing. I asked him why he asked me the question. He said nothing and then the conversation dropped.
Did your husband know you were coming here to testify?
Yes, sir.
How long since did he know it?
Day before yesterday.
What did he say?
He said he guessed I would be summoned up here as a witness, but was not sure.
Did he say by whom and for whom?
No, sir.
Did he say what for?
No, sir.
Did you know what for?
No, I did not.
Were you ever summoned to appear here?
Not until to-day.
By whom were you summoned?
By Willard Richards.
Did you know what for?
No, I did not.

When your husband told you you would be summoned, did not you ask him what for?

Yes; he said I would know when I got here.

Did he not say it was to testify in a dispute about the Emporium property?

He said it was about the property, and he supposed I would be called up as a witness, and about the Emporium lot.

Did he not say you would be called to testify on behalf of Cain's heirs?

No, he did not; he never mentioned either one.

By whom were you called?

By Richards' heirs.

252 When Willard Richards summoned you, you knew what it was for, did you not?

Yes.

Are you certain of that fact?

Yes.

Are you aware that you stated before that you did not know what you were coming for?

I remembered stating that I did not know; till to-day I did not know. The sum and substance of it, I had an idea.

How often have you and your husband talked about this case?

I don't know as we have talked about it at all.

Have you ever talked of anything connected with the case at all?

No.

Are you positive of that fact?

Yes.

Have you ever talked with any one else in relation to the case?

No; I have not.

Have you not mentioned anything in relation to the case whatever, or heard any one else do so?

No.

Do you remember of having talked with George Stringham about the dispute between the Cain heirs and Richards about the Emporium lot?

Yes; I do remember a few words that passed between me and Mr. Stringham.

Was anything said in relation to fences?

Yes; he asked me if there was a fence running north and south.

Who else was present?

No, one.

Did not you, your husband, and Mr. Stringham have some talk about this matter?

I don't remember.

You have had more than one conversation about this case, have you not?

No.

What did you reply to Stringham when he asked about the fence?

I told him there wasn't any.

Did you not tell him there was one east of your house, and that if your husband testified to the contrary he was a liar?

No, there were no such word used by me.

What remarks were made?

There were no remarks made but what I have told you.

253 You have been asked if there was not a fence running north and south through that lot, and you answered no. Now don't

you remember that there was a fence a portion of the way through that lot?

No, there was not any.

Do you remember there was a pair of bars east of your house, passing through the north fence you have spoken of?

No, there was a panel of a fence that could be taken out and replaced.

Do you remember there was a stake near those bars?

No, I don't remember any.

Are you positive there was no other building east of your house except the one that Braddock and Franklin lived in?

No, none that I remember.

Don't you remember of a little double log house a little west and south of the adobe house?

No, there was not.

Was there no log house of any kind there?

I don't remember any.

Who beside Stringham and your husband have you conversed with about this case?

No one.

You were aware before coming here that the question of a fence was in dispute in this case, were you not?

I judged so from the question asked me by George Stringham.

Did you not know from other sources also?

No.

Who did you ride to the court-house with?

Willard Richards.

How far did you come?

Three miles and a half.

What were you and Willard talking about in coming this distance?

The topic of conversation was old times and our younger days?

Did it not relate to the time you lived on the Emporium lot?

It was about things that transpired while we were there.

her
HARRIET × EDDINS.
mark.

Sworn to and subscribed before me this 20th day of September, A D. 1872.

D. BOCKHOLT, *Clerk*,
Per E. W. EAST, *Deputy*.

SEPTEMBER 26—10 a. m.

HEBER JOHN RICHARDS, being duly sworn on part of Richards' claimants, says:

What is your age, and how long have you resided in Salt Lake City?

254 I will be 32 years old next month, and will have been here 24 years next month.

What relation did you bear to Dr. Willard Richards, deceased?

I am his son.

When did he die, and where?

Died March 11th, 1854, in the fourteenth ward, Salt Lake City, at his residence, on lot 7, block 76, plot L, Salt Lake City.

What family did he leave, and what were their names respectively?

Myself, Rhoda Ann (now Knowlton), Sarah Longstroth Richards, one of his wives, her children were Willard R. Richards, Joseph S. Richards,

Sarah Allen, married to Joseph F. Smith, Paulina A., wife of Abram Doremus; Nannie Longstroth, another wife, whose children were Alice Ann, married to Lot Smith, Mary Acenath, married to Joel Grover, and Stephen S. Richards; Mary Thompson, another wife, whose child, Phebe Amelia, married to Jacob Peart, jr. (she had a posthumous child called Amelia, I think, who died in infancy); Susan Bailey, another wife, her daughter, Mary Ann, married to Elias Van Vleet; next wife, Rhoda Foss, she had one child, Calvin W.; next wife, Ann Braddock, and next wife, Susan A. Liptroth. These are all alive except Sarah Longstroth and Ann Braddock.

Do you know lot 6, block 69, on which the Jennings' Emporium building now stands?

I do.

Who was the first owner of that lot?

In November, 1848, we drove our wagon on to the block north of that lot, and after turning out the team, father said he would show us the lots which he claimed, which were lots 7 and 8, block 76, plot A; he then took us on to lot 6, block 69; I recollect going on to this lot from the fact that I had nothing but buckskin moccasins on, and on it was a patch of brush, then called squawberry; I stepped on some prickly pears in going up to this brush, and they ran through into my feet, and in sitting down to pull them out, I sat on some more, which made an impression I have not forgotten. There was no improvements on that lot, which he also showed us, and said these were the three lots which he claimed.

How long after that did your father continue to own that lot, or what disposition did he make of it, or any portion of it, if any?

He let Stephen Longstroth have the west six rods or six by ten rods; six rods east and west, and ten rods running north and south; he then reserved a strip forty feet wide, running across the lot. He then gave John Eddins the next forty feet wide. He reserved a strip, as I understood, a rod wide, about the south side of the land still remaining. Joseph Cain occupied a piece of ground north, on the roadway; the dimensions as near as I can tell, was forty feet on Main street, and
255 I think about five rods back. The remainder of the lots he made no disposition of up to the time of his death, that I have any knowledge of.

Will you state in detail the improvements made on that lot from the time you first saw it up to the date of your father's death; when made, by whom, and for whom, as near as you can remember?

In the winter of 1848 and 1849 the ward was fenced in one joint inclosure; a portion of that fence went along the eastern line of this lot. In the spring of 1849 father moved up two log rooms from the old fort, which were put up again on this lot. Lyman Hinman and family lived in the south room, and the north room was used as a carpenter's shop. Some time during that summer, I think it was, he built a small adobe house in the northeast corner of that lot. The next improvements on the lot were Joseph Cain's, to the best of my recollection. The blocks were joined off in the joint inclosure or blocks in 1852; a fence was run across the lot, fencing off the western portion for an orchard. In the spring of 1853, when we had got the trees and were about to set them out, father concluded that was too far away, so he exchanged six rods there, with Stephen Longstroth, for eight rods off the north end of lot 2, block 76. This fence around the piece intended for an orchard, according to my recollection, was made of boards; the rest of the north fence, up to the northeast corner, of poles. We used this log-house, after Hinman moved out of it, for a stable, for a year or two, and

then moved it on to the block north. When Hinman left the adobe house, which, I think, was in 1851 or 1852, Joseph Cain occupied it while building his new house. I think it was in the fall of 1852 that M'r's Ann Braddock and her daughter, Clementina Reed, went to live in that house. M'r's Franklin lived with them. M'r's Braddock and M'r's Franklin lived there till a short time after father's death, in 1854. When they moved up into the room made vacant by father's decease, that house was then rented to Daniel Shearer, for a whip factory. In the fall of 1853, John Eddins built a little house on a piece of ground father had given him on that lot, which house he lived in until the spring of 1855. I think after father's death Joseph Cain took up the road-way south of his house, which went back to Eddins, west, and came north to about twenty-five feet. Some time after that, the land north passed out of our hands, and, as I understood, went into the hands of the trustee in trust. Some time during father's lifetime, a person named Topham occupied that road-way for or with a little slab meat shop. The forty (40) feet between Eddins and Longstroth, Josep' Cain sold to Riley, not long after father died, and James Riley afterward sold it to John Blazzard.

Where was the fence you spoke of running through that lot at the time the piece was fenced off for an orchard located?

It was either on the line between Riley's piece and Eddins', or
256 a few feet west. I remember when they were building the Babbitt house on the Longstroth piece, it was close to that house.

Describe, if you can, the exact location of the Eddins piece of that lot.

His northeast corner was 151 feet front from the northeast corner of the lot; his land then continued 40 feet west from that.

State, if you can remember, whether there was any fence running through north and southeast of Eddins' house during the time he lived there.

There was none that I have any recollection of. On a Christmas day there was a fight on Main street between the soldiers of Steptoe's command and the citizens, I think it was on Christmas day, 1854. There was no fence there then. I know it was after father's death and while John Eddins lived there.

State, if you know, whether or not any of the ground near the little adobe house built by Hinman was ever cultivated and, if so, by whom.

In 1853 M'r's Braddock's daughter cultivated a portion of the ground north and west of the little house, and I cultivated the west.

What makes you remember this, and what was raised there that year?

In those days our watering time was measured by the minute. One day I took the water off her part when the time was up and turned it on some beets, when she said to me that if I did not let her water alone until she got through with it she would knock my d——d head off. We raised beets, beans, and, I think, some melons.

How do you know this was in 1853?

M'r's Braddock's daughter came here in the fall of 1852 and returned in the fall of 1853.

State whether or not any other of M'r's Braddock's daughters lived with her in the little adobe house while she lived there, and, if so, what one.

Her daughter, Augusta Clayton, lived with her some part of the time; I don't know how long.

By whose instance and by whose permission did M'r's Braddook occupy that building?

As a member of my father's family. I don't know of any person's permission. Father had to furnish a place for his wives to live in the house I now occupy, and when her daughter came she went so as to live with her daughter.

You have spoken of a little house south of Cain's house, occupied by one Topham for a meat market. From whom did he get permission to carry on that business there?

I should say from my father, for two reasons: one because he owned the land and another was I got the meat regularly that was charged on the rent. My father and myself boarded with Aunt Rhoda, his
257 sister, and I was sent regularly every day for meat, which was charged on the rent.

Did M'r Cain have any outbuilding or improvements on that lot during your father's lifetime, and, if so, where were they situated?

What he had were immediately in rear of the house, close to it, I think. There was a privy or pig-sty, and, I think, an oven. I am not so positive as to oven.

State whether or not your father ever sold or gave to Joseph Cain the east half of that lot.

I am sure he did not.

During your father's life state whether or not he had possession or control of any part of that lot except you have already stated he occupied.

No, sir; he did not.

Did he after that; if so, what portion, and by what means did he get possession and control of it?

Soon after father's death he took possession of it, and claimed to own the south half of all that lot east of John Eddins' strip, and had control of all the north half. As father's administrator, he claimed to own the south half only, as he said, through permission of President Young. The north half I know he considered ours for the following reasons, viz: the little house that M'r's Braddock lived in he persuaded her to leave, and she did so reluctantly; I myself got shoes on that rent; and I also heard him talking to our family of the benefit they would derive from leasing the corner. He talked at one time of digging a cellar, and then leasing the ground. I think Livingston & Kinkaid, as he said, made him the proposition to lease the ground for a number of years, they to pay ground-rent. It was not done, for, as he said, the president did not approve of it. We hauled away the north fence and burned it, thinking that was all we were to get of it.

State whether or not he ever stated to you that he held the south half of that lot by permission of Brigham Young, and, if so, what was the occasion of his saying it.

(Objected to as leading by Cain's counsel.)

Whenever we talked about the subject, which we often did, he always gave me to understand that he took that land outside of what he occupied at my father's death, by permission of Brigham Young.

State whether, if you know, Joseph Cain, deceased, ever claimed to own the east half of that lot.

No; I never heard that his heirs did until this trial commenced.

You have said you got shoes on rent of the little house, after your father's death; for what length of time after that did you so get them?

I can't be positive, but I think about two years.

Who made such shoes?

258 Snelgrove done the most of it. There was another man in with him.

Have you ever had any conversation with Joseph Cain, one of the claimants here, about this case or the extent of their claim on that lot, and, if so, when and where?

I had two or three conversations with him, I think, last fall or winter. I would not be positive whether he ever defined exactly the boundary of the land he claimed, but I was always, in all the conversations, under the impression that all he claimed was that his father had possession of at the time of his death. No dimensions were spoken of.

What do you mean by the part his father was in possession of at his death?

Two rods frontage on Main street and running back 151 feet to Eddins'.

When did you first learn that he claimed more than that?

I heard a rumor of it this last spring, just before time for filing.

When did you first learn that they claimed the east half of the lot?

I first heard it in court since this contest commenced.

You have stated that Joseph Cain, deceased, was the administrator of your father's estate. What kind of property did he take control of in that affair?

All of the property, both personal and real.

Do you know by what process Brigham Young, as trustee in trust, again possessed the northeast portion of that lot?

I have no knowledge on that point.

Do you know Thomas Bullock?

I do.

Did you hear him testify in this case?

I did.

State whether or not you have had any conversation with him on the subject of Joseph Cain's possession of that lot, and, if so, repeat that conversation as near as you can.

I had a talk with him once at my house. I asked him where the original records were; he said he turned them over to Theo. Hawkins, and did not know of their whereabouts since; asked him then whether father had given or sold Joseph Cain any portion of that lot; he said he did not know of his selling or giving him any part of that lot; that Joseph Cain had occupied it, and he had heard that D'r Richards gave it to him. This conversation was again repeated in substance at his house.

Cross-examined by Cain's heirs' counsel:

How do you know your father let Stephen Longstroth have a portion of lot 6, block 69, plat A?

I heard the conversation when they made the transfer and saw the ground measured off.

259 What year was it?

In the spring of 1853; in the time of setting out trees.

Where was the trade made at?

On the ground.

On what part of the ground?

On the north end of Longstroth's lot. The piece my father got; he was to get ten rods. They measured down the east side and went down the west; began at the northeast corner and found he would take away the grave—so only got eight rods instead of ten.

What was your age at that time?

I was twelve years old past.

Will you again describe the improvements on that lot from the time you first saw it in 1848 up to the death of your father. I refer to the Emporium lot.

The first thing on it was the east fence, which was a ward fence put up in the winter of 1848 and 1849. In the spring of 1849 father had two log-rooms moved up from the old fort. They were put up on this lot. Hinman and family occupied the south room and the north room was used for a carpenter-shop. I think that during the summer we built a little adobe house on the northeast corner of the lot, in which he lived about a year. The next house was built by Joseph Cain, south of the little adobe house. I believe that in 1851 the north fence was built; I will not be sure as to time, and I think in 1852 father replaced the west end of that fence with a board fence; across the lot the next was either Babbits' or Eddins'. Then Longstroth put up a little fence adjoining Babbits' on the west. Longstroth's and Babbits' houses may have been put up together or about the same time.

What time did Joseph Cain move on the Emporium lot?

I don't remember; I think in 1857.

At the time he moved there what houses were on the east half of that lot?

The two log rooms and the little adobe house.

Are you sure those were all?

All that I can recollect.

After that time your father never erected any improvements on the east half, did he?

I think not.

Then the only improvements your father ever put on the east half was the little adobe building and two log rooms, were they?

None other that I know of.

The only improvements made on the east half of that lot, from the time Joseph Cain moved there, up to and long after your father's death, were made by Joseph Cain, were they not?

260 I have no recollection of any except John Eddins' cellar must have extended over on the east half.

Of what was that cellar composed?

I think it was partially built of cobble-stones, taken right out of the ground.

There was some piles of stone or rubbish near by, was there not?

I do not remember.

How far from First South street was that cellar?

I think, twenty feet.

There was an alley-way east of this foundation, or cellar, was there not?

I think there was a path, or room for one.

Do you know by what arrangements with your father Joseph Cain moved on to that lot?

If I recollect aright, I heard Joseph Cain speak of having to walk so far to his business, but I have no knowledge of any arrangements between him and my father touching his occupancy of that ground.

You know that he was there by the consent of your father, do you not?

My understanding was that he was a tenant at will, the same as the Hinmans had been before him.

Did you ever make any survey or measurement of that lot in your father's lifetime?

I don't remember of doing so.

Did you ever assist in making any?

I cannot recall any.

Did you ever see any made?

I have a faint recollection of seeing W. W. Phelps measure it once, I think it was on the south line, but don't know what he was measuring for.

You have not any time measured or assisted in measuring that Emporium lot or any portion of it, have you?

I have no recollection, except by pacing some portion of it this summer.

You never saw it measured, have you?

I have no remembrance of any particular time, still I think I have, but can't say when.

You don't know about the object of any measurement or distances, do you?

No, I don't remember as to objects or distances.

For anything you know to the contrary, might not Joseph Cain have purchased a portion of that lot from your father?

He may have done so.

You have referred to some conversation of Joseph Cain's, will
261 you repeat all you have ever heard him say in relation to the Emporium lot?

In our business affairs it was necessary I should see him almost daily, and sometimes even oftener, and quite often in our conversation the subject of his taking this lot came up, and it would be utterly impossible to give all the conversations we had on the subject. He always gave me to understand, when talking of it, that he took it by President Young's permission, and he did not consider it any of my business, and one time I remember his saying, "I stand in your father's shoes, and I will do as I please."

In what connection did he use that expression?

Because I was talking with him about taking that land, and I considered he had no right to do so.

Joseph Cain was a man of good sense, was he not?

Yes.

Much above the mediocrity?

I don't think he was so considered.

He had the reputation of being an honest man, did he not?

(Objected to as irrelevant by Richards' counsel.)

So far as I know he was not what you would call a bad or dishonest man, but very sharp in his dealings, and if he got the advantage with a man in any business transaction he would hold it. That was the reputation he had.

You know he bore the reputation of being universally a just man, did he not?

(Objected to by Richards' counsel as irrelevant.)

If that was his reputation, I have not heard of it.

Will you not repeat the language M'r Cain used in some of this conversation?

If there had been one or two, I could do so possibly, but where there were so many, I can't recollect any one. I talked with him at his own house and at our own premises. I remember his getting angry with me and threatening to strike me; once he threatened to have me arrested.

But you can't recollect any one of these conversations?

No, I cannot.

SEPTEMBER 27, 1872—10 a. m.

Cross-examination of Heber John Richards continued.

How do you know the northeast corner of the Eddins' piece is 151 feet west of the northeast corner of the Emporium lot?

The lot is 330 feet east and west; Longstroth had 99 feet, Riley 40 feet, Eddins 40 feet, these deducted from 330 leave 151 feet.

How do you know John Eddins had 40 feet?

262 Because I paced it and it ran a little over 13 paces, and it has always been bought and sold for that, and has never been estimated otherwise.

Your father never gave Eddins, or any one else, a deed for that property, did he?

I have no knowledge of any.

There is none recorded, is there?

I never looked to see.

For anything you know of your own knowledge, may not your father have given Eddins 25 feet instead of 40?

All the knowledge I have is from hearing my father say that he had given Eddins that piece of ground, 40 feet wide across the lot, and from hearing Eddins say so, and from the fact of Eddins living on it during my father's lifetime.

Except what you had been told, then, you knew nothing about the matter?

Certainly not.

Will you give the language your father used?

I heard him more than once tell John Eddins that when he got ready to marry and wanted a home he would give him a piece of land.

When did you pace that lot?

Within a year past.

The old monument and building were around at that time, were they not?

There was a part of the old fence still remaining behind, the balance was moved.

When was that old fence built?

I believe in 1855.

By whom?

I think it was Price.

How far east of the old foundation of Eddins', spoken of, did it stand?

I should think about six feet as near as I can recollect.

Did it extend through the lot to Pixton's line?

It did.

Don't you remember there was a fence composed partly of brush on or near the line of that fence before it was built?

I do not.

You don't know of your own knowledge that that fence stood on the east line of John Eddins?

It could not have been but five inches.

How do you know it?

Because Price's house took up nearly all the ground, and the fence was a few feet east of that, and because the portion of that fence when I paced it was between thirteen and fourteen paces from the west line.

263 Because the land east of it belonged to John Eddins, and that west of it belonged to Blazzard.

How do you know these facts?

They occupied and used it for their own, and paid taxes on it.

You infer it then from these facts and nothing else?

Yes.

And that is all you know personally about it?

Yes.

And it is upon these facts you swore positively to it?

Yes.

Have you not sworn to other facts on the same basis you have sworn to this?

(Objected to by Richards' counsel as irrelevant and improper cross-examination.)

All facts that I have sworn to are facts.

Within your personal knowledge?

Yes, except when I have stated otherwise.

Don't you remember when you were first asked who you had heard say where Blazzard's east line was, you said you had heard no one except Mrs. Blozzard speak of it?

Yes, the conversation I had with Mrs. Blazzard was with regard to her east line, and that I had with E ldins was about her east line, and with Mrs. Longstroth it was with regard to the division. Mrs. Blazzard said she told Blazzard, when he built his house, that some day Price would move his house and leave him out of doors.

You never said, then, that John Eddins and Mrs. Longstroth told you that was Blazzard's east line?

I don't recollect the words I used.

Did John Eddins and Mrs. Longstroth ever tell you anything about Blazzard's east line, or have you ever heard them, or either of them, say anything about it?

I have talked with them about it.

Did they, or either of them, tell you where that east line was?

I don't recollect whether they did or not.

Did you not say so a few minutes since?

I said I talked with them about it.

But, before that, did you not say that they told you where the line was, or that you heard them say where Blazzard's line was?

I don't remember.

Your memory is not very good of matters of a very recent date, and you cannot remember recent events near as well as those which transpired when you were a boy twenty years ago.

I believe I have a good memory.

Yes.

You say that before you talked with these parties you knew that that was Blazzard's east line?

264 And because she told you so you concluded it was so, and have stated so positively on your oath, have you?

Nothing of the kind; I knew it as well before as I did after; I merely asked her to see what she would say.

How did you know it before?

I knew the same way I know your name is Baskin, everybody says so, and I never heard it contradicted; it has been so considered for the last nineteen years. The ground is still there, and will show for itself by actual measurement.

Name some one whom you have heard say it was Blazzard's east line.

I heard John Eddins, Mrs. Blazzard, and Mrs. Longstroth say so; I don't recollect any others now.

How did they come to to tell you so, when and where?

Last fall I went to see Mrs. Blazzard, and asked her if she had a deed

to that place. It was then she showed me the boundaries; since that time I was on the place with John Eddins, and he showed me the boundaries of his land. The time Mrs. Longstroth was talking about it was when they tore down Price's house and left Blazzard's quite open.

Mrs. Longstroth and John Eddins were witnesses for you in this case, were they not?

They were.

At the time you was on the lot with John Eddins he was in attendance at this trial, was he not?

I am not sure whether it was after he had given all his testimony or only a portion of it.

At the time Mrs. Longstroth talked with you about that east line had she given her testimony?

It was about a year ago and before this contest was commenced.

Can't you remember of hearing any other person speak of that east line?

I cannot.

Then it is upon these statements made to you that you have predicated your testimony in relation to that line?

All knowledge I have of that extent previous to any conversation was as stated, and was entirely independent of them.

Why did you refer to them as a source of your knowledge?

I did not refer as a source of knowledge, but because you asked me whom I had heard talk of that east line.

Did you not refer to them because you did not remember having heard any one else say that was Blazzard's east line?

265 SEPTEMBER 30TH, 1872—10 a. m.

Cross examination of H. J. Richards continued.

You say that in stepping the Eddins piece you began on the line of the old fence, and stepped to Blazzard's east line and Eddins' west line?

I began at Blazzard's east line and stepped across Eddins' piece.

Did not the old fence east of Eddins' extend through the whole block, from north to south?

I think not; I am pretty sure it did not.

Did you not step or measure the Blazzard piece?

I cannot recollect doing so.

Did you ever step or measure the Longstroth piece?

I don't remember that I ever did.

Into what house did Joseph Cain move when he first went upon lot 6?

The little adobe house built by Hinman, to the best of my recollection.

You know nothing about what arrangements he made with your father when he moved into that house?

No, I do not.

Did you ever know of your father visiting Mr. Cain while living in that house?

I don't recollect seeing him there.

Your father and Mr. Cain were very intimate friends, were they not?

I know of no more intimacy betwen them than with any other of his clerks. It never struck me as being so.

Mr. Cain was your father's chief business clerk, was he not?

No more so than other clerks.

Mr. Cain was an adopted son of your father's, was he not?

This is the first time I ever heard such a thing hinted.

How long did Mr. Cain live in that little adobe house?

I think between one and two years; I don't know exactly.

Were you ever a clerk or a book-keeper for your father during his lifetime?

No, sir.

You were too young to act in that capacity, were you not?

He kept me employed in his office all the time; I did not have charge of any books. I acted as messenger boy; sometimes made entries in the subscription-book of the Deseret News.

Mr. Cain had a stable back of his house, did he not?

I don't recollect any previous to father's death; think he had one afterwards.

How much did your father let Joseph Cain have of the Emporium lot?

I don't know exactly.

266 You do know, however, that he gave him a portion of it, do you not?

I only know that he occupied a portion of it; on what terms I don't know.

You think it was a tenant at will?

Yes.

Why do you think so?

Because whenever father disposed of any portion of that lot I and the family knew of it, and if he gave or sold to Joseph Cain I never knew of it.

You have stated that you have repeatedly conversed with Joseph Cain. Where did you converse with him?

Both at his place and ours.

About how often did you converse about this lot?

I don't remember; a good many times.

You say that you have conversed with him in his house; whereabouts in the house?

In different portions; the last time I recollect was up stairs in a rocking chair.

What conversation had you at that time?

I don't remember the words, but it was in relation to affairs at Farmington.

Can't you remember some particular place where you have talked about this lot?

I am not positive that I can.

Are you not positive that you cannot remember such place?

I am only positive we talked about it often; I cannot remember any particular place. We talked a great many times, and quarreled about other things besides this. Whenever we talked about it I am positive he told me that Brigham Young authorized him to take it (the lot).

Can't you give his language in some one of these conversations—what he said and what you said?

The only expression that I can recollect now is, "I will give you to understand that I stand in your father's shoes."

And among the frequent conversations had with him, this is all of his language you can now remember, is it?

Yes.

Do you not remember that you have before stated that you had a conversation with M'r Cain on the Emporium lot in relation to his claim to the same?

Yes; I remember so stating, but can't give the exact words.

What makes you remember it was on the lot?

I can't tell what makes me remember it. I only remember it was there.

267 On what portion of the lot was it?

On different portions; I remember one in front of his house most distinctly, for in that he asked me if I would not like to go to England.

What did he say in relation to the lot at that time and place?

The only thing I distinctly remember was he thought of building a little store on the south end of his house, in the roadway, to rent.

You say that you remember this conversation distinctly, and that it happened in front of his house?

Yes.

You have a more distinct recollection of this conversation than you have of the others?

Yes.

Don't you remember you stated a few minutes since that you could not remember any particular place where you ever talked with Joseph Cain about this lot?

Yes I did not speak to him about the lot at this time.

Are you now certain that you can remember no particular place where you have ever talked with Joseph Cain in relation to the Emporium lot?

I cannot now positively recall any one particular place or conversation on that subject.

Don't you remember saying a moment since that you talked with him about that lot at your house?

No, I don't remember so saying.

Don't you remember saying a few moments ago that you talked with him at his house?

Yes, I said at his premises and ours; as he would go home to his dinner he passed through our premises, and that he would stop and converse about the affairs of the estate, and occasionally the subject of the lot would come up.

Was there any person ever present during these conversations?

I don't recollect.

He told you he had taken a portion of that lot which belongs to the estate for himself, on the authority or sanction of Brigham Young, did he?

Yes, that was his invariable reply.

Reply to what?

To our grumbling or questions, as we considered he was robbing us of the land.

To whom do you refer by "our grumbling?"

My father's family.

Will you name some members to whom such reply was made besides yourself?

I don't remember hearing him tell any person else.

268 Why do you say "we," then, if you never said he was stealing this property on the authority of Brigham Young to any one else?

Because we grumbled; I don't remember any particular time.

At the time you stepped the Eddins piece, was the west wall of his original wall standing?

I don't remember.

Blazzard built his house up against the west side of the house John Eddins built, did he not?

I don't know, but think not.

You never made any entries in your father's account-books of his personal dealings with others, did you?

I can't recollect of any.

Don't you remember of seeing some entries on your father's account-books of his dealings with Joseph Cain in relation to lot 6?

No.

Do you remember or not whether you ever made inspection of your father's account-book?

I never saw any books of account except those in the News office and post-office; those I examined often.

Did either of those books contain accounts of your father's private dealings outside of the business of the News office or post-office?

I don't recollect of any.

When was it that Topham first built his meat-store south of M'r Cain's?

I do not recollect the date.

How much rent per month did M'r Topham pay for that shop or the ground on which it stood?

I have forgotten.

Have you any impression as to the amount?

I think we used to get about two pounds of meat per day.

Did M'r Topham keep any books?

I can't recollect how he kept accounts, whether on a slate or otherwise.

Did you ever hear any settlement with him for the meat you got there?

I don't remember now.

Did your father have any to your knowledge?

I don't recollect.

You never saw any of the accounts of M'r Topham, did you?

I don't know but I did at the time, but can't give any particulars now.

What makes you think you did?

I don't think it possible for me to get meat as often as I did without seeing his accounts.

269 Did you ever talk with him about them?

Yes.

What did he say?

I asked him if he had his accounts he kept in those days; he said he had not.

When was this?

Some time this last summer.

Is this the only conversation you ever had with him on the subject of his accounts?

I can't recall any other.

Did you not ask him whether he kept any accounts?

I don't recollect; my object was to ascertain if he had any accounts, and so soon as I found he had none I left.

Was it not a matter of doubt in your mind whether he ever kept any accounts?

No, for I thought he had, and was in hopes of finding some.

You say you think you must have seen his accounts; do you remember any single item contained in them?

No, I do not.

Are you positive you ever saw any?

I am satisfied I saw them, but am not positive.

You are positive that you don't remember any of the items, are you not?

Yes.

Will you not state the transaction with Topham in relation to the meat and rent of which you have before spoken?

I would take a plate and go down there and get a piece of meat, take it home, and aunt would cook it and we would eat it.

You never made any arrangements with Topham respecting the rent, did you?

No.

You never talked with him about it?

No, not that I can remember the conversation or particulars.

When you went for meat, Mr. Topham would weigh you out a piece, give it to you, and ask no questions, did he not?

Nothing more than how much do you want.

This is all you know about the matter of your own personal knowledge, is it not?

I know I got the meat, and I know I understood at the time it was to go on the rent; that is all my personal knowledge about the matter.

Why did you so understand it?

Because I understood that was our land, and that those occupying would pay us rent, and when I went elsewhere for meat I had to take money to pay for it.

270 You know, Mr. Richards, if your father had so desired, he could have got credit for the meat at any other butcher-shop in town, do you not?

I know that, too.

Are the above the only means you have for stating that that meat was got of Topham on the rent?

I can't say they are, and yet I can't remember any other at this time.

How did you come to understand that that land belonged to your father?

Because the whole lot had belonged to us, and I never knew of his disposing of it.

You don't know that he did not dispose of it to Joseph Cain, do you?

No.

You don't know the fact then positively as you have stated, but it is a mere supposition of yours from something else?

All I know in regard to that is it was considered a road-way.

How did you know that fact?

By hearing those that were interested in it talk about it.

Whom did you hear talk about it?

My father, Longstroth, and Eddins. I am not sure, but I think it was so considered by the Pixtons.

You have learned that fact recently, have you not?

No; I knew it at the time as well as I do now, as it was often talked of.

Was not the talk to the effect that the city would some day run a road through there?

I never heard of any such idea.

You only know what you have heard these parties say in relation to it, then?

That is all I know.

Did you ever talk with Joseph Cain, deceased, on the subject of the rent of that lot, or any portion of it?

I can't recall any conversation with him in regard to the rent.

If any such conversation had occurred, would you not likely have remembered it?

I don't know whether I would or not.

But you have no recollection of ever hearing him talk in relation to the rent of that lot or any portion thereof?

I have heard him talk about it to the family. He would come up to the house and get the women folks together and talk to them about the affairs of the estate; sometimes I was present. I heard him
271 talking about renting the little house to Shearer, and about renting or leasing the ground, saying it would be an income to the family.

Where was he when he said this?

Generally at our house. Generally met in the large room.

Did M'r Cain say this every time he met at the large house?

I should think not.

Do you remember any particular time?

I do not.

Do you remember who was present?

No.

Are you certain it was in that large house?

I am certain me and him talked about it in that house.

What did he say?

I cannot give you the words. I have given the substance of the conversation.

Will you give the words as near as you can?

I could not give the words, for it was talked on a number of times.

In what year was it?

It was shortly after father's death in 1854.

What makes you remember it was in 1854?

I remember it was shortly after father's death, and he died in 1854.

How do you remember it was shortly after his death?

I fixed the fact of his talking of renting the rooms as M'r's Braddock moved into father's rooms shortly after father's death.

How do you know that fact?

Because I heard him tell her he could rent that house, and it would bring in some boots and shoes for the family.

Repeat the exact language used as near as you can.

The language was, if she would move up into the log house he could rent the house she was now living in, and the rent would half provide shoes and boots for the family.

Where was this?

In the little house where she was living.

Was it at night or in daytime?

I have forgotten.

Who all was present?

I don't remember.

Were you inside or out of the house?

I don't remember.

Were you sitting down or standing?

I don't remember.

How long were you there?

I don't remember.

What were you doing there?

272 I don't remember.

Where did you go when you left?

I don't remember.

Where in the house were you when this occurred?

I don't remember.

Don't you know that just a moment ago you said that this conversation in which M'r Cain requested M'r's Braddock to leave occurred in that house?

I believe I did.

Why do you now state you don't know whether it was in the house or not?

My recollection is she demurred at first to going, and that he talked with her several times before she consented to go. Whether these talks were in or out of the house, or on the door-step, I could not say.

You did remember first that they were in the house?

Yes; but could not remember where all of them were.

Afterwards you did not remember whether they were in the house or not?

I do not remember whether in the house or in the door-way.

Now, you think they were partly in the house and partly on the door-step?

Yes.

Why do you think they were on the door-step?

Because I believe I can remember leaving them there.

Was it warm or cold weather?

Warm.

Do you remember anything else that occurred there on that occasion?

I do not.

Will you not again repeat all that was said there as near as you can?

He told me if she would move up into the long house he would rent this, and it would bring in shoes for the family.

This is everything you can recollect about what occurred, is it?

Yes.

Do you have any remembrance of seeing Joseph Cain and your father measuring that lot; and, if so, when?

I do not.

Did M'r Cain tell M'r's Braddock to whom he intended to rent that house?

I will not be positive, but think he did.

To whom?

I think he said to Shearer.

What year did M'r Shearer move there?

I think in 1854; right away after she left.

273 How long afterwards was it before M'r Snelgrove moved in?

I think about the same time.

OCTOBER 1—10 a. m.

Cross examination of H. J. Richards continued.

In the conversation between M'r's Braddock and Joseph Cain, was the name of M'r Snelgrove mentioned?

I don't remember.

Do you remember the event of M'r Shearer moving into the house that M'r's Braddock vacated?

I do not remember his moving. I know he was there.

Who else was there?

Two men, whipmakers, Huskinson and Twede. Huskinson & Shearer were partners.

In what were they partners?

Whipmakers.

Did they also carry on the shoemaking business?

I do not remember.

How long after M'r Shearer came there was it before Snelgrove came in?

I think about the same time.

What part of the house did Snelgrove occupy?

I am not sure; think it was the west side.

Did he occupy a separate room?

There was only one room in the house.

Don't you remember that there was a tailor occupied that portion of the room afterwards used by Snelgrove before Snelgrove went there? The tailor's name was Darger.

I knew Darger, but can't recollect positively whether he ever worked in that shop or not.

Will you again repeat in substance what M'r Cain said in that conversation?

The substance was M'r's Braddock could move out of that house into the log-house, and the house could be rented, and the rent would help supply the family with shoes.

Did you ever hear Joseph Cain, at any other time, talk on the subject of renting or leasing that lot, or any portion of it?

I heard him several times, in talking with the family, planning what would be best to be done; talk about renting that ground.

What ground?

Around the little house.

Repeat, as near as you can, Joseph Cain's language.

I cannot recall the language.

Can't you remember any of it at all?

I just remember the intent of the conversation.

274 Tax your memory and try and give some of his language.

I cannot possibly give his words.

None of them?

No, sir.

Are you aware that you have done so before in your examination?

I do not think I pretended to state his exact words.

Don't you know that you attempted to state them as near as you could?

I know it was not in my mind to attempt to give his exact words.

What did he say in relation to leasing a portion of that lot?

I don't remember his words.

In any of the conversations you ever had with Joseph Cain, do you remember his words?

I have told you several expressions he made, which I cannot repeat. He told me once that he wished me to understand that he stood in my father's shoes, and asked me how I would like to go to England.

Are you certain that he used the exact expression you have just mentioned?

I am.

Can you remember any other words he used, when he asked you if you would like to go to England?

I cannot give exact words.

Can you remember of anything else he said at the time he used the language in relation to standing in your father's store?

No, sir.

Did he say anything else at that time that you remember?

I don't recollect.

You have stated all that you remember of that conversation then?
Yes.
Do you remember the substance of anything else that occurred at that time between you and M'r Cain?
No, sir.
I wish you to tax your memory and see if you can't remember any thing else?
I can not recallanything. I would tell you in a minute, if I could.
You say M'r Cain told you he took that lot or a portion of it by permission of Brigham Young. Will you not give the languaage he used, as near as you can?
I cannot give the language; my recollection is not sufficient to give his language.
But you are certain he said he stood in your father's shoes?
Yes.
What else did he say at that time and in that conversation?
275 I cannot recall the words now.
In what connection did he use the expression?
I don't remember now.
Will you not tax your memory and see in what connection he made use of that language?
I cannot recall the connection now.
Don't you know that in your examination you have before stated the connection?
I can't recall doing so.
If you have any knowledge of the connection in which it was used you would have no difficulty in stating it, would you?
Not if I could recall it.
If you had any such knowledge since I have asked you in different forms to tax your memory in relation to it, you would have no difficulty in bringing it to your memory, would you?
That does not follow; a person may try an indefinite length of time and fail, and then at another time it may come to him.
Now, is it not so that you do not know the connection in which that language was used?
I have forgotten it at present.
Are you not conscious of the fact that in this examination you've stated the language of Joseph Cain materially different to what he said about standing in your father's shoes?
I cannot; the words may be a little different.
You are certain that the last statement made of it is correct, are you not?
His exact language was he wished me to understand that he stood in my father's boots, and more than this I can't recollect.
Will you again state in substance what M'r Cain said in relation to the Braddock or adobe house and the object for which he was to rent it?
If she would move up into the log house, the place she lived in, the rent would help to provide shoes for the family.
Did he say to whom he expected to rent it?
I don't remember whether he did or not.
Did you ever have any other conversation with M'r Cain, or hear any in relation to the rent of that house?
I remember the matter was talked over by him and the family, but I can't remember any of the particulars.

Did you ever hear anything further about the matter of shoes for the family from Mr. Cain?

I cannot recall anything now.

How do you know the family got shoes on the rent of that house?

They went there and were measured and got shoes made for them; I got some myself.

276 Is that the only reason you have for that statement?

It was a well-known fact all the time; it was so understood by all parties concerned.

What parties?

The family, and those who occupied the shops, and the neighbors who knew our affairs.

Name those you have heard speak of it outside of the family?

All those who occupied the shop.

It's from what you have been told, then, and the fact that you got shoes there, that lead you to make this statement, is it not?

I knew it at the time, and if everybody else were to testify differently it would not alter my knowledge and testimony.

State your reason for knowing it at the time.

I can only state that the fact did exist, and I know it.

That is your reason, then, is it?

Yes.

Can't you give others?

I can only give the reasons I have already given.

Are you certain of this fact as you are that you got beef of Topham on the rent?

I am quite certain of both.

Did M'r Cain know or intend that these shoes you speak of should go on the rent of that little house?

I suppose he did from the fact that he was administrator.

How was the matter done; I mean by that what was the manner of the transaction of the rent? State in detail.

I don't know the manner of doing it; Joseph Cain done that.

Did Joseph Cain charge you individually for the shoes you got?

That I don't know; don't think I ever saw his books.

You know his handwriting, don't you?

I believe I do.

You know the items you got from Snelgrove or some of them, do you not?

I can recall none now.

M'r Cain furnished you other articles of clothing, etc., besides shoes, did he not?

I don't remember any.

Don't you know Joseph Cain kept a written account of his dealings with you and the family of D'r Richards?

The only account I have ever seen or heard of was in a book shown me by F. D. Richards last summer or winter, I forget which.

Did you see or know of that book in the lifetime of M'r Cain?

If I did I don't remember it now.

How many times did you get shoes from Snelgrove?

277 I don't remember.

Do you remember more than one time?

I do not.

Do you remember getting any clothes from Darger through Joseph Cain?

I do not.

Do you know whether or not Joseph Cain charged you or the other members of the family with shoes got of Snelgrove?

I do not.

Did Mr. Cain ever tell you to go there and get shoes?

I have no recollection.

You got shoes there and you understood it was on the rent?

Yes.

With whom did you understand you were to settle for those shoes?

I never understood that we were to settle with anybody for them.

But they were to be given to you free, you understood, did you?

Yes.

What property of the estate did Joseph Cain take charge of as administrator?

I understood he took charge of the whole of the estate.

The real estate also?

Yes.

Do you know that fact?

I so understood it.

Did he ever rent or lease any of the property except that little house?

I have no recollection of any. I don't think he did.

If he had done so, would you been likely to have known it?

Yes.

You heard him speak of leasing a portion of the Emporium lot, did you not?

There was some talk between him and the folks about it; it is like a dream. I can't give the particulars.

Did you ever hear him talk on the subject more than once?

I remember hearing them talk about it, but whether once or twice, I can't remember.

What makes you think it was about that lot?

I knew it; the conversation showed that.

How do you know it?

The conversation showed it.

How do you know they were talking about it?

Because I heard it.

What was said that enables you to be so positive?

I can't remember now.

278 Can't you remember a single word that makes you so positive?

No.

Did you not dream this?

No.

Did you hear the name of Livingston and Kinkaid mentioned?

I won't be positive, but think I did.

What makes you think so?

Because it seems to me so.

Do you know anything about the arrangements under which Mrs. Braddock went to live in that little adobe house?

I only know she moved out of the west room of the house I now live in, and went to live there when her daughter came.

Mrs. Franklin was living in the house when Mrs. Braddock went there, was she not?

I think she came in with Mrs. Braddock's daughter.

Mrs. Braddock's daughter and Mrs. Franklin were living in that house before Mrs. Braddock, were they not?

I think they all went together.

You stated that the reason Mrs. Braddock went there was to live with her daughter?

That was my understanding of it.

Mrs. Braddock's daughter and Mrs. Franklin furnished the house, did they not?

I don't know.

They provided for the house, did they not?

I don't know.

You have no knowledge of your father having done so, have you?

I don't recollect how that was.

You say Mrs. Braddock's daughter had three children living with her, do you?

Either two or three; I think three.

You say Mrs. Franklin was not one of your father's wives?

She was not so considered, and I do not believe she was.

You don't know of any arrangements of your father by which these persons went to live in that house, do you?

No; I don't know anything about that.

OCTOBER 2D—10 a. m.

Cross-examination of Heber John Richards continued.

Mrs. Braddock was a spiritual wife of your father and not a temporal wife, was she?

(Objected to by Richards' counsel as irrelevant.)

I don't know what you mean; all that I know is that she was considered one of his wives.

279 Don't you know she was sealed to him for eternity, only to become his actual, temporal wife in a future state of existence?

(Objected to by Richards' counsel as irrelevant.)

I have not the slightest knowledge of the nature of the ceremony.

Did your father cohabit with Mrs. Braddock as his wife?

(Objected to by Richards' counsel as irrelevant.)

I do not know.

At the time Mrs. Braddock lived in that little house your father cohabited with his wife in the homestead, did he not?

(Objected to by Richards' counsel as irrelevant.)

There were several women whom I believe he lived with and cohabited as his wives, and were recognized by the family as his wives.

Which of his wives was his first?

I do not know.

Mrs. Braddock was not the first, was she?

I do not know.

Do you know whether your father was ever married to Mrs. Braddock at all?

Only by general repute.

Is it only by general repute that you know he was married to any except your mother?

It is so except with the last wife; I witnessed that ceremony.

There is a family record of your father's marriage with your mother is there not?

I have no recollection of seeing any.

What year was it you said you irrigated some vegetables on that lot?

In 1853.

What makes you think it was in 1853?

Because Mrs. Reid, Mrs. Braddock's daughter, was living in the house at the time, and went away in 1854.

How many times did you irrigate the vegetables of which you speak?

I don't remember.

Did you ever irrigate them except that time?

I suppose I irrigated them every time they needed it, as I did the rest of the garden.

How do you know that you irrigated them except that time?

I don't remember except that particular instance. I used to irrigate the other garden once a week.

What direction from Mrs. Braddock's house was this last garden of which you speak?

North.

It was on the corner of the lot north, was it not?

280 A portion of it. The other was on the other two lots of my father's.

The ditch from which you irrigated these last gardens was the same from which Mrs. Braddock's daughter irrigated hers, was it?

I think so; am not positive.

Your father owned the corner lot north of the Emporium corner, did he not?

Yes.

I understood you to say you cultivated a portion of the east half of the Emporium lot in 1853; am I correct?

I remember watering it, and I have no doubt but I weeded it and hoed it.

You don't remember having done so, except from the fact of watering it, do you?

From the fact of watering it, and having to work in the garden whenever it was needed.

But you have no distinct recollection of having worked there at any particular time, or at any time at all, have you?

No.

Then in making the statement that you cultivated a portion of that lot you predicate it upon the facts you have stated, and not any positive rememberance of your having done so?

I remember cultivating that ground that year, but I can't remember any particular time when I worked in it.

Do you remember seeing any other member of your family working in that garden that year?

I do not remember now.

The only thing you do remember, then, is that you cultivated it that year?

That's all.

Did you ever water Mrs. Braddock's daughter's ground for her?

I don't recollect.

It was the daughter who cultivated it, was it not?

Yes; the portion she cultivated she considered hers.

What was done with the vegetables you raised on the east half?

I don't remember now.

What was done with the vegetables raised on the other garden spoken of?

They were used by the family.

You remember gathering a portion of the vegetables, do you not?

Yes, at some time; I don't know whether that year.

You don't remember gathering the vegetables raised on the Emporium lot, do you?

No.

Will you again repeat your conversation with Thomas Bullock?

281 I asked him if he knew where the records were which he used to keep. He said he turned them over to Leo Hawkins when he started to England, and had not seen them since. I asked him if he had any knowledge of father's having sold or given any portion of the Emporium lot to Joseph Cain. He said he had not. He knew that Joseph Cain occupied a portion of it, and had heard that my father had given it to him.

Was that all he said?

All that I recollect on that subject.

Did he say what part Cain occupied?

No, sir.

Did you ask him if he had ever recorded any portion of it to Joseph Cain?

I did not; I thought my question covered that ground.

Have you given the exact words of this conversation, or only the substance of it?

I think pretty near the exact words, as near as I can recollect.

You say you never knew that Cain's heirs ever claimed ten rods square of that lot until you heard it in court at the beginning of this trial?

I have no recollection from the fact that two and a half feet they had not filed on, and I understood they had only filed on nine by ten rods.

Then there is two and a half feet west of the nine rods on that half lot on which Jennings has not filed on?

I don't know what Jennings filed on.

Before this suit you knew the Cain heirs claimed some portion of the ground clear up to the Emporium corner, and including the Emporium building, did you not?

Yes; I heard so.

You have heard all or most of the witnesses who have testified on your behalf and that of Brigham Young make these statements, have you not?

I heard the first four.

You have read all the minutes of the testimony, have you not?

I have read Snelgrove's and a portion of Shearer's.

Have you not heard the rest read?

No more of it.

You have talked with Bull, M'r's Bull, M'r's Pixton, M'r's Longstroth, M'r's Nannie Richards, M'r's Clayton, John Eddins, and was present when John Eddins testified, were you not?

Yes; I talked with him and heard of John Eddins.

You know the substance of the testimony which he gave, do you not?

282 I can't say I do.

You know or have been told a greater portion of what they testified, have you not?

A portion of it I have.

Are you aware of the fact that in your chief testimony you have testified to and corroborated every material point that all the witnesses of yourself and Brigham Young testifies to?

I don't know it, but I think it not unlikely.

Have you done this by the aid of your memory alone?

I have. My testimony would have been the same if I had never seen one of them, or if they had all testified to the opposite.

What part of lot 6, block 69, do you and the other heirs of D'r Richards claim to own at present?

There is a difference of opinion. Some consider that we should have all that is filed on, and some say they would not take that part occupied by M'r Cain when father died, if they could get it.

How much do you really claim that the heirs own?

(Objected to as not cross-examination and as being irrelevant.)

All that we have filed on.

Have you any individual interest in the matter at all?

No pecuniary interest, only to see that justice is done to my father's family.

You are one of the parties who has filed on this lot, are you not?

Yes, sir.

Why do you say, then, that you have no pecuniary interest in the matter?

Because such is the fact.

Will you explain how this is?

It is an understanding between myself and brothers, Willard and Joseph, that whatever is awarded shall go to the rest of the heirs, the women and children.

What brought about such an understanding?

I don't know of anything except that we are better able to take care of ourselves than they are.

You act in this matter, then, only as trustee for the others, do you?

Yes.

The other heirs, except your brother Joseph, did not sign the declaratory statement?

No.

You did not sign the statement in person at all, then, only as trustee?

No, sir; I so considered it when I signed it.

You did not intend to lay any individual claim to any portion of the property, then?

283 I did not.

Before signing your name as trustee, did you confer with them about it.

I believe I saw most if not all of them about it.

What did you see them about?

(Objected to as incomplete by Cain's counsel.)

I saw them occasionally as they came into town, but don't recollect on any particular business.

Did you ever confer with them about this lot before you filed your declaratory statement?

I did with most if not all of them about some portion of the lot, but whether on that particular piece or not, I don't remember.

Did you obtain authority from the rest of the heirs, or any of them, to make this filing?

Myself and Joseph had a power of attorney to attend to all business of the estate generally, but I don't know whether they all signed it or not; they all agreed to sign it.

Do you know how many of them signed it?

No; I do not know.

Was not the special object of this power to convey a portion of that lot to Brigham Young?

No.

How do you know they all agreed to sign it?

I asked one or two of them if they had signed it, and they said they went to sign it, but they could not find the clerk to acknowledge it.

Is it upon that statement, then, of some of the heirs that you assert they all agreed to sign that power?

Yes; that is what they told me.

Are not a great many of the other positive statements of yours made on the same principle as this one is made?

My testimony has been given to the best of my knowledge.

Is not the statement that all the heirs agreed to sign that power an example of your statement to the best of your knowledge?

What I have stated as facts are facts.

Don't you know that your statements throughout are contradictory and false?

I know that if I stood before God, who can judge my heart and know my intent, that my statements would be as I have made them. If I have erred, it was not intentional.

Do you recognize the obligation of an oath?

I do.

Do you believe in future punishment?

I do most assuredly, both here and hereafter.

284 You made a deed to Brigham Young on behalf of the heirs for a portion of that property, did you not?

(Objected to as irrelevant by Richards' counsel.)

Every one of the heirs signed it.

How much did he pay you for the portion of lot 6 transferred?

(Objected to as irrelevant by Richards' counsel.)

Fourteen thousand dollars.

Was the proceeds divided among the heirs, or did you get it all?

(Objected to as irrelevant and not cross-examination.)

It was divided among all the heirs.

At the time you settled with Brigham was it not agreed that you should assist in carrying on the suit?

I never heard the subject mentioned at all.

There was something agreed upon between you and Brigham Young or his agent in relation to carrying on this suit; will you state what it was?

There was no agreement whatever on the subject that I have any knowledge of.

In consideration of the $14,000 you conveyed a portion of the property on the block north of the Emporium, did you not?

No; not an inch.

You and Brigham Young have been co-operating in prosecuting this suit, have you not?

Not in the least.

You and he have the same attorneys, have you not?

We have, as I understand.

Have you not been active in procuring witnesses for Brigham Young as well as yourself?

I have had no thought of doing so; it never entered my mind to procure a witness for him.

Have you not a desire to see him succeed in this case?

No farther than a general desire to see right prevail.

It is your opinion, then, that he is right?

It is since he paid us for the piece of land. Before that time I had the same feeling in regard to that part of the lot as the other.

H. J. RICHARDS.

Subscribed and sworn to before me this 22d day of November, A. D. 1872.

D. BOCKHOLT, *Clerk*,
Per E. W. EAST, *Deputy*.

OCTOBER 3D—2 p. m.

WILLIAM HASKINSON, being sworn on the part of Richards claimants, says:

285 Do you know the lot and corner on which the Eagle Emporium now stands?

Yes; I do.

State whether or not you ever occupied a building on that lot, and if so, what business you followed.

We, me and Mr. Shearer, occupied a small house as a whip factory, in 1855 and 1856, on that lot.

Of whom did you rent that house, and to whom did it belong?

We rented of Joseph Cain; it belonged to the family of Willard Richards; this was the understanding we had; we got two shoemakers in afterwards, and Joseph Cain told us to let the family have anything they wanted out of the shop, which saved us paying money.

What family was it Joseph Cain told you to let have things out of the shop?

Willard Richards'.

State whether any member of Willard Richards' family ever got any work out of the shop, and if so, what it was.

Yes; they got new shoes made and shoes repaired.

State, if you know, how those shoes were paid for.

They were paid for on our rent.

State whether or not you ever heard Joseph Cain, deceased, say anything about who owned that property, and if so, what he said.

Just in that way, to let the family have anything they wanted, and it should go on the rent.

Do you remember of his saying anything about that property in any other connection than that of the rent? and if so, state it.

I remember one morning he was talking, and said, "There is a chance for you to buy this land, as the family want to sell it."

To whom did he make these remarks, and who was present?

He was talking to me and Mr. Shearer. I don't know whether there were other persons present or not.

How many rooms were there in the house you occupied?

Only one.

Did Snelgrove and the other shoemaker occupy the same room in which you and Shearer made whips?

Yes.

Was there any upstairs to that house?

No.

Was there any shed on either side of it?

No.

Cross-examined by Cain's counsel:

Will you repeat the language Joseph Cain used to you and Mr. Shearer when he talked to you about buying the house?

He said there was a chance to buy the shop and a piece of the
286 land. He said he had been talking matters over with the doctor's family, and they were willing to sell it.

Are you certain he used the expression, "the doctor's family?"

Yes, sir; I am.
What time in the day was it?
In the morning.
What day of the month was it?
That I do not know; we had not been there long.
What side of the house did he enter?
He came in at the south door; there was no other.
Did he take a seat or remain standing?
He was standing.
Where was he standing?
Against the door.
How long did he remain there?
Only a few minutes.
What else did he say at the time beside what you have repeated?
Nothing that I recollect.
He simply stepped in and made the remarks you have stated, and went out again, did he?
Yes.
That was all he did or said at the time?
Yes.
Where did he then go?
Back into his house.
Did he mention any price?
No.
Did he say anything how it could be sold?
No; only he had been talking to the family and they wanted it sold.
At that time most of the doctor's family were very young, were they not?
Yes.
What age was his oldest son?
I do not know.
Did Mr. Cain tell you that if you wished to purchase he would sell to you?
Yes.
Was there nothing said about the terms?
No.
What was said in reply to Mr. Cain's offer to sell?
Not a word.
Are you sure you smiled?
Yes.
How many years since was that?
287 As early as 1855, at any rate.
Did he seem to be anxious to sell?
Well, he simply said the doctor's family wanted to sell.
Are you certain he used the term "doctor's"?
Yes.
What makes you remember that?
I remember it as well as if it was now. I have mentioned the same thing a number of times years ago.
You stated that Joseph Cain told you that if you would purchase he would sell to you. Will you give the language he used when he said this, as near as you can?
We had been talking things over, and he simply said, here is a chance for you to buy this house and a piece of the land; that he had been talking with the doctor's family, and they were willing to have it sold, as near as I can remember his words.

Did he say anything else at that time on any other subject or any further on that subject?

No.

What do you mean, then, by the expression, "We had been talking things over"?

We had been talking about things of every-day life.

Will you state some of the things of every-day life you had been talking about immediately before Joseph Cain used the language you have stated?

I could not exactly tell.

How long had you been talking?

Not five minutes.

Was he there four minutes?

Yes.

And the only thing you can remember in the whole conversation is what you have repeated?

Yes.

You have given the exact words M'r Cain used, have you?

Yes.

How is it you remember these words so distinctly and cannot remember anything else that occurred?

I cannot tell any reason for it.

You say you spoke of this conversation about ten years ago?

Yes.

Since then you have not spoken of it, or spoke of it till recently, have you?

No; not until about three weeks ago.

Whom did you first tell, recently, about this conversation?

I repeated it to old man Shearer first.

288 Whom did you next repeat it to?

I don't know; perhaps to Hague brothers.

Did you repeat the conversation to these parties in the same language you have repeated it here?

No, I suppose not.

Did you not repeat to M'r Shearer the conversation in the same words you have repeated it here?

Yes.

You have repeated this conversation in the same words you have done here very often, have you not?

Yes.

Ten years ago, when you repeated it, did you repeat it in the same words you have done now?

Yes, if any person asked me about it.

About how many times have you repeated this conversation, in the exact langauge you have now used, in the last month or six weeks?

Several times.

I will ask you to repeat Joseph Cain's exact language again?

He said there was a chance to buy this house and a piece of this land; that he had been talking with the doctor's family, and they were willing to sell it.

What did you say?

Nothing. I smiled and shook my head.

Have you used M'r Cain's words as he spoke them there?

Yes, as near as I can place a word.

May you not have forgotten some of his words?

No.

You are positive of this?
Yes.
May you not have used some words that he never used, having forgotten his exact language?
No.
Further than the exact words which you have repeated, you remember nothing else that occurred?
No.
You have told James Hague about this matter?
Yes, I have.
Did you tell Frank Hague?
He was standing by, and other boys.
Did you not tell Charles Crismon?
Yes.
Did you not tell him that M'r Cain offered to sell it to you without saying anything further?
No, I told him all.
289 Did not Joseph Cain get whips on his own personal account from you, which went on the rent?
I don't know.

WILLIAM HUSKINSON.

Sworn and subscribed before me this 3d day of October, A. D. 1872.

D. BOCKHOLT, *Clerk*,
Per E. W. EAST, *Deputy*.

OCTOBER 27, 1872—10 a. m.

JETER CLINTON, being sworn on behalf of Richards' claimants, says:

Were you acquainted with Dr. Willard Richards in his lifetime?
I was.
Do you know where the Eagle Emporium now stands?
I do.
Who was the generally reputed owner of the lot on which that building stands, during Dr. Richards' lifetime?
The only reputed owner that I knew of was Dr. Richards, and he might have sold it before his death, so far as I know.
State whether you ever had any conversation with him in connection with his ownership of that lot; and, if so, state that conversation as near as you can, and the circumstances that led to it, with the time and place.
(Objected to as irrelevant and hearsay and calls for an answer in relation to the whole lot, when it should be confined to that portion claimed by Richards' heirs.)
I was one of a committee appointed by the city council of Salt Lake City to see Doctor Willard Richards and ascertain if that lot could be obtained to establish a city market. We called on Doctor Richards and asked him if we would sell that lot to the city for that purpose. He said he would. We asked him his price, and to the best of my recollection he asked $500. This took place in 1851, 1852, or 1853.
State whether or not this negotiation was in relation to the whole lot.
Yes; we wished to buy the whole lot.

JETER CLINTON.

Sworn to and subscribed before me this 4th day of October, A. D. 1872.

D. BOCKHOLT, *Clerk*,
Per E. W. EAST, *Deputy*.

OCTOBER 21ST, 1872.

LEGRAND YOUNG, sworn on part of Richards' claimants, says:

What is your business?

Attorney-at-law.

290 Do you appear as such for any of the parties to this suit; and, if so, for whom?

I am one of the firm of Williams & Young, and as such appear for Brigham Young and the heirs of Willard Richards, deceased.

State when your firm were employed in this suit for those parties, respectively.

We were employed, in a general manner, for Brigham Young, to appear in all his contested cases, about the middle of June last past, and we appear in this case persuant to that engagement, and for the heirs of Dr. Willard Richards, deceased, by Dr. Heber John Richards, a few days (some two or three) before we commenced taking testimony in this case.

State if you know anything concerning the settlement between Brigham Young and the heirs of Willard Richards, deceased; the relation to the portion of the Emporium lot deeded by them to Brigham Young, and whether you were Brigham Young's agent in that transaction, and whether there was any understanding or agreement with them that they were to assist in carrying on this suit.

I was his agent and know about the transaction, and know there was no such agreement. I did all the business myself. Brigham Young was absent at the south at the time.

Did you ever ask Thomas Bullock the question whether or not he had ever had any conversation with Willard Richards, deceased, in relation to Joseph Cain owning or occupying any part of the Emporium lot, or whether he ever heard Dr. Richards say anything at all about Joseph Cain in connection with that lot, or any portion of it; and, if so, where was it, and what was his answer?

I did ask him such question at his house about a week or ten days, as near as I can remember, prior to commencing taking testimony in this case. His answer was that he had never head Dr. Willard Richards say anything about it one way or the other.

Cross-examined by Cain's counsel:

Will you repeat, as near as you can, the language used in asking Mr. Bullock that question?

This is the language used, as near as I can recollect: "Did you ever hear Willard Richards or Joseph Cain say anything about the property known as the Emporium corner, in connection with the ownership of Joseph Cain?" His answer was: "I never heard Willard Richards say anything about it." He said he heard Joseph Cain speak of having got a portion of that from Willard Richards. He said he asked Mr. Cain why he did not get a deed to it, and Mr. Cain said he considered possession as good as a deed, or next thing to a deed.

Was this not the question you asked, "Whether he (Mr. Bul-
291 lock) knew whether Dr. Richards had ever sold or given Joseph Cain lot 6, block 69, or any part thereof?"

I may have asked him a similar question either before or after asking the previous, as stated.

Was not the purport of your question to the effect as to whether he (M'r Bullock) knew anything about the arrangements between D'r Richards and M'r Cain, by which the latter became possessed of a portion of that lot, and was not that the object of your enquiring?

I don't remember that such questions were asked; it was not by me, and the only object of my inquiry was to ascertain generally what he knew about the ownership of that lot.

LE GRAND YOUNG.

Subscribed and sworn to before me this 21st day of October, A. D. 1872.

D. BOCKHOLT, *Clerk*,
Per E. W. EAST, *Deputy*.

WILLIAM JENNINGS, being duly sworn on behalf of Brigham Young, says:

Were you acquainted with Joseph Cain in his lifetime?

I was.

Where did he live at the time of his death?

On Main street, on block 69, lot 6, plot A.

Have you ever done business on that lot, and, if so, for how long?

(Objected to as irrelevant by Cain's counsel.)

I have done business on that lot since 1854.

Were you acquainted with the wife and children of Joseph Cain?

I and my family and them have been in the habit of visiting backward and forward.

Have you ever had any conversation with them, or either of them, about the extent of the ownership of Joseph Cain, deceased, on that lot? and, if so, state what that conversation was, as near as you can, and when and where it occurred.

I had a conversation with M'r's Cain, at her house in the fourteenth ward, concerning a portion of this property. I was building the house which, I was informed, was, one corner of it, on the Cain property. I was told by M'r's Cain that a piece of this property on which I was building was a part of their estate. She stated to me that I was building seventeen and one-half feet on their land running north and south, sixteen feet running east and west, known as the alley-way of Ransohoff building. She told me that the Ransohoff property, the north line of it, was the north line of her property. Formerly that her family did not claim any land north of the Ransohoff property, nor west of the alley that lay west of the Ransohoff building. That was the substance of the
conversation in regard to the extent of her property. She had
292 sold twenty-five feet to M'r King, and King sold to Ransohoff.
She told me to go on with my building; that that matter would be amicably settled.

Who was present when this conversation occurred?

Her daughter, most of the time. I think there was no other present at this time.

Did you ever have any other conversation? if so, repeat it.

I had a conversation with Joseph Cain, jr. He stated that they did not claim any land north of the Ransohoff line nor west of the alley-way; that he would make the title of the Ransohoff property good; that his mother had sold it, and the family were receiving the benefits; that the building I was putting up was seventeen and one-half feet one way and sixteen feet the other on their ground. He likewise told me to go on building; that the thing could be compromised.

When did this conversation take place?

The last of September or first days of October of last year.

How far is it from the line of East Temple street to the west side of the alley-way you have mentioned?

One hundred and fifty-one feet.

How far is from the north line of the Ransohoff building north to First South street?

Eighty-two and a half (82½) feet.

Who has now possession of the land adjoining and west of the alley-way mentioned?

I have.

Do you own that land?

I do; I bought it and paid for it of William Price, about four years ago; he bought it of John Eddins, and John Eddins of William Richards.

(Question and answer objected to by Cain's counsel.)

How much land did you buy from William Price, and where is it situated?

(Objected to by Cain's counsel as irrelevant.)

I bought forty feet north front by ten rods, running south, commencing 151 feet west of the northeast corner of lot 6, block 69.

When did you first hear of the heirs of Joseph Cain claiming a portion of the land you got from Price?

About five or six weeks ago from this time.

When did you first hear of their claiming the land north of the Ransohoff building?

Some time during last spring.

Did you never, previous to that time, know that they laid claim to a portion of that lot?

No, sir.

293 Will you describe on Exhibit B the land covered by your building, the land that Mrs. Cain claimed?

On this plot the Ransohoff building is No. 51, and the land Mrs. Cain claimed was 16x17½ feet on the southeast corner of the land covered by the southeast corner of Jennings' west building as described on this Exhibit.

Cross-examined by Cain's counsel:

How much of lot 6, on block 69, plot A, do you claim to own?

I own, in the first place, at the northeast corner 40 feet six inches east front running west 135 feet. I also own 16 feet north front running 107½ feet south, and forty feet north front, running ten rods south. Then I own the Ransohoff property, 25 feet east front by eight rods west.

You claim the first and last mentioned pieces by virtue of deeds from Brigham Young to you, do you not?

(Objected to by Richards' counsel as incompetent and irrelevant and not proper cross-examination.)

Yes.

The 40 feet north front was originally owned by Price, I understand you to say?

Yes.

By the daughter of Mrs. Cain, you mean Mrs. Crismon, do you not?

Yes.

Did not the heirs of Joseph Cain, or some one for them, notify you, shortly after you began your new building, that if you continued to build you would do so at your peril, or something to that effect?

No, sir.

Don't you know that Joseph Cain, before he became of age, employed Marshall & Carter as attorneys to bring suit for the east half of lot 6, and did not one of them tell you of that fact?

(Objected to as irrelevant and not proper cross-examination by Richards' counsel.)

No, sir.

Have you never heard of such employment?

No, sir.

What time do you say you had the conversation with Joseph Cain?

In last September or October.

Who was present during the conversation?

His mother was present at one conversation; at another, no one.

Re-examined by Richards' counsel:

Did you ever hear of Joseph Cain's employing Marshall & Carter to bring suit for any portion of lot 6, block 69?

No, sir; the dispute in reference to a portion of the lot was put into their hands—that to effect a sale—that portion was the Callahan property.

294 Cross-examined by Cain's counsel:

You have filed on a portion of the property in dispute, have you?

I have filed on a portion of lot 6.

WILLIAM JENNINGS.

Sworn to and subscribed before me this 13th day of September, A. D. 1872.

D. BOCKHOLT, *Clerk*,
Per E. W. EAST, *Deputy*.

SEPTEMBER 18th, 1872.

JOSEPH BULL, being duly sworn on the part of Brigham Young, sr., says:

How long have you resided in this Territory?

I came into this Territory about September 19th, 1851.

What is your business, and where have you been employed since you have been here?

When at home I have been constantly employed in the Deseret News office. I am a printer. Have acted a portion of this time as business agent for the Deseret News office.

Were you acquainted with Dr. Willard Richards and Joseph Cain in their lifetime?

Yes, with both of them intimately.

Where did Joseph Cain live when you first knew him?

On Main street; he then lived on a portion of the lot where the Eagle Emporium now stands.

State whether or not you ever lived in his house, and if so, how long.

About the 1st of November, 1852, until about the 1st of August, 1854. I lived at his house in the capacity of a boarder.

What was Mr. Cain's business at that time?

Attending in the business department of the Deseret News, and also in the post-office.

During the time you boarded at Mr. Cain's, were you much in his company?

A great deal, both in a private and public capacity.

Did Mr. Cain live in the same house during the time you were there?

Yes.

What kind of a house was it, and where on the lot was it situated?

An adobe house two stories high, and as near as I can recollect, from the south to the north walls from forty to forty-five feet; the first floor contained two rooms, divided by a hall about six feet wide; the rooms

were about sixteen by eighteen feet; I think the north room was used as a parlor. Out of that we went into a general living room, situated on the west side of the main building. The south portion of the house
295 was built for the purpose of a store. It had a large window in it. On the west side of that room was a building that was used as a bakery. The main building was situated on the south portion of the lot, where the Eagle Emporium now stands. I think it was about seven feet from the sidewalk on Main street.

Did you ever have any conversation with Joseph Cain during the time you lived there about the extent of his ownership on that lot? If so, state when it took place, and repeat that conversation as near as you can remember it.

In the latter part of the summar of 1853 he told me, as we walked down from the News office, that he wished to build an additional building on the south side of his present house on a piece of land which had been and was then being used as a wagon road; stating, if he could, that he would have another store, and would have to put up only three walls, as the south wall of his present house would form one wall of it. But, said he, I shall have to obtain a piece of land from the doctor (meaning Doctor Willard Richards) for a wagon road, as he would have no way of getting to the back side of his premises he then had and also the one he contemplated putting up on the south side. When within a few feet of the north wall of his house, on the side wall, we both stood, Mr. Cain pointing to a panel of pole fence, which, I believe, went close up to his north wall, stating, if he could obtain the length of that panel (which, as near as I can recollect, was a rod long) to use as a wagon road he would be all right so far as getting around his buildings was concerned; for, said he, I have no trouble in getting in on the east or on the north side of the lot now, but he would be trespassing by going on other people's ground. I remember distinctly remarking to him that he would have no trouble in getting the strip of ground on the north side of his house for a road, when he made known his plans to Doctor Richards. He said, in consequence of his poor health, if he could put up the building on the south side of his present house, that with his bakery and the front shop, it would be a source of revenue for himself and family while he lived, and that it would be increasing in value all the time, as there was a prospect of business continuing from that corner south as much as it was doing on the opposite side of the street, and would be a nice legacy for his children when they became of age.

Did you ever have any other conversation with Mr. Cain about that property? If so, repeat it.

That was the only conversation that I ever recollect having particularly, but in general conversation, on more than one occasion, I understood from M'r Cain that he had built on the north line of the ground that he had permission to build upon.

During the time you lived at M'r Cain's, state whether or not there were any buildings north of his dwelling house on that lot.

There was an adobe house about where the Emporium building
296 now stands, on the northeast corner of the lot, which was occupied by a portion of D'r Richards' family.

State, if you know, the names of those members of D'r Richards' family, and whether or not they occupied that building the whole of the time you boarded at M'r Cain's.

Yes; one was M'r's Braddock, and another elderly lady whose name I have forgotten. I am confident that the house was occupied from

about the time I went to M'r Cain's until I left; but am not positive whether these same parties occupied it all the time.

Do you remember whether or not M'r's Braddock was there at the time you left?

I do not remember.

Were you acquainted with John Bollwinkle during that time; and, if so, where did he live?

Yes; he lived with Joseph Cain. I became acquainted with him in 1853.

During the time you were there what was the nature of his employment, if you know?

He was employed to do chores, cut wood, and wait around the house; after he had been there awhile he used to assist in the bakery.

During the time was he an employee in the Deseret News office?

I have no recollection that he was an acknowledged employee in the News office until the winter of 1854 and 1855. From 1853 to 1854 or 1855 he would occasionally assist in mailing papers, and in the post-office. He was employed to do this by M'r Cain, and the News office allowed M'r Cain for this at about the rates we used to pay our boys.

How often was the paper issued then?

Until the beginning of the summer of 1853, I think it was issued once in two weeks; we ran out of paper about May, and we published sometimes monthly, and sometimes only occasionally, in consequence of running out of paper. In consequence of this all the hands, except myself and two boys, had only partial employment.

State whether or not you had any acquaintance with the books of account of the Deseret News kept prior to 1854? If so, state what kind of books they were.

There was one book, I judge about five quires of foolscap, bound in ordinary binding. In this each employee had several pages marked in it. The accounts of the employees of the office were kept in this book. All the employees had access to that book.

State whether or not there were any other accounts in this book than those of the employees of the office.

I have no recollection of seeing any other except the employees' accounts.

297 State, if you know, whether during that time there was any other book in which some of the accounts of employees were kept.

I never saw any.

If there had been any such would you probably have known it?

Yes, sir.

Why?

Because that was all the way we had in those days of reviewing our accounts. Errors would sometimes occur by employees overdrawing, and all were allowed access to the book of accounts so as to know how accounts stood.

Did you ever see or hear of a two-and-a-half or three-quire book there, containing accounts of some of the employees of the office—the accounts of D'r Richards, and M'r Cain's account with D'r Richards?

No, sir.

Will you again state the conversation you had with M'r Cain, and give his exact phraseology as near as you can?

In the latter part of the summer of 1853, M'r Cain and myself were coming from the office to his house after business hours. M'r Cain stated that he wished to put up a building suitable for a store on a piece of ground south of his then present building that had and was then

being used for a wagon-road, but, if he put up that building, he would have to obtain a strip of ground north of his house of the doctor, meaning D'r Willard Richards, or else he would not be able to get around to the back of his premises. Also, that if he put up this building on the south side, together with the one occupied as a bakery, they would bring him quite a nice sum of rents, and enable him to keep his family comfortable, and also be a nice legacy for his children when they became of age, as property was likely to become as valuable on that side of the street, in the course of time, as on the opposite side. As we neared the house, he pointed to a panel of old fence which went close to his north wall. I judge the poles were about a rod long. He said if I could get a strip about the length of the poles of D'r Richards to use as a wagon-road he would be all right. I stated in reply, that on explaining to the doctor he would have no difficulty in obtaining it. He said at that time he had no difficulty in getting it on the north, and without a right of way back there he would be trespassing on other people's property.

It was yesterday afternoon you repeated this conversation in your examination-in-chief, was it not?

Yes, sir.

You have used almost the same language to-day in repeating this conversation, and observed the same order as you did on yesterday. Had you previously arranged the conversation in your mind?

No, sir.

298 You have read the minutes of the testimony taken in this case, have you not?

No; I have seen no minutes.

You have talked over the testimony in this case, have you not?

No, sir, not the direct testimony. I have talked with no one about it directly or indirectly since yesterday.

But you have talked with some one about portions of the testimony that has been taken, have you not?

No, not particularly.

Have you had any such talk with any one?

None, except with my wife.

Have you had any talk with any one else?

No, I have had no intercourse or communication with any one.

Have you talked with any one who has not been a witness in the case?

I have expressed my opinion.

What is the opinion so expressed?

My surprise at the Cain family claiming the lot where the Eagle Emporium now stands.

You consider it an attempt to swindle, do you not, and have you not so expressed yourself?

(Objected to by Richards' counsel as irrelevant.)

I considered it an unjust claim.

Why do you so consider it?

Because I always understood the lot north of M'r Cain's house belonged to D'r Willard Richards, and from none more than from M'r Cain himself. I was personally informed by M'r Cain that D'r Willard Richards was about disposing of the west portion of that lot, in the fall of 1853, to M'r Stephen Longstroth, and that M'r Eddins owned, or the doctor designed to let him have, a piece of that portion that M'r Longstroth was to have, and I never heard that M'r Cain ever had made a purchase of any land north of his house.

You don't know he did not, do you?

No, I don't know.
Did M'r Eddins have any house on his lot?
I think he did.
Was there a fence east of Eddins' house running north and south through the lot?
I don't recollect any.
Where on the street were you when this conversation with Joseph Cain began?
From the time we left the Deseret News office.
Did it begin before or after you got out of the office?
After we got out of the office.
299 How far from the office when the conversation began?
As soon as we left the office, as near as I can recollect.
About how many feet?
I can't say exactly.
How do you know it was as soon as you left the office?
Because I recollect it.
If so, why can't you recollect the distance?
As near as I can recollect, the conversation commenced on the side-walk just as we came out of the office.
How do you remember it was in the latter part of the summer?
Because about this time I was informed by M'r Cain of the sale to Longstroth, which was consummated in the fall.
In what month was the sale consummated?
I can't say positive; it was in the fall.
Of what year?
The year 1853.
Has any one talked to you about the date of that sale?
No, sir.
I don't recollect seeing any.
Do you recollect seeing any wagons passing south of M'r Cain's house?
I do not know.
Do you know whether, at the time you were talking with M'r Cain, there was an alley-way south of his house through which wagons could pass?
I am under the impression there was.
What constituted the south boundary of that alley-way?
The wall of M'r Cain's house on the south constituted the north wall of the alley, and I think there was a pole fence at the south.
On which side of the street did you and M'r Cain come down?
On the west side.
And you commenced the conversation about a lot as soon as you left the office?
We did.
Had you any conversation about the building before coming out?
I do not recollect of any.
What gave rise to the conversation of which you have spoken?
I could not say.
Since that conversation, have you ever called it to your mind; if so, how often?
Yes; I can't say how often.
Have you ever repeated this conversation to any one; and, if so, when?
I have not.
300 Are you or not certain of that fact?

I have not in fact.

Have you out of fact?

I don't know that I have.

Do you not know that you were summoned here to testify about this conversation?

No, sir.

Did you ever talk to Heber John Richards about this case?

Some few months ago he asked me if I knew how much ground M'r Cain professed to own on that lot. I told him I thought he owned about three rods frontage, and that I was always under the impression that M'r Cain built on the north line of the land he occupied.

Did you not state your reason for so supposing?

I did not at that time nor since.

But you have expressed your reasons when you gave your opinions to others?

Sometimes I have.

To whom?

I can't name parties; it has been a matter of common conversation.

What are your reasons that M'r Cain only owned three rods, and that he built on his north line?

Because he told me Doctor Richards gave him permission to build on a portion of that lot, and I asked him why he put up such a large house. He answered, he wanted to build on or occupy with his building all the land he had permission to build on.

You have told some persons about the conversation you had with M'r Cain?

I have mentioned it in common conversation.

What do you mean by common conversation?

As the matter would be brought up casually, as a matter of news or gossip.

On those occasions you would repeat the conversation between you and M'r Cain, would you?

Sometimes.

Can't you remember some individual to whom you have repeated it?

I don't think I can?

Where and how recently did you repeat it?

I can't say, but at various times.

Have you talked with Brigham Young since this matter arose?

No; I have not.

About how often have you repeated this conversation since this controversy arose?

I cannot say how often.

301 But you are positive you have repeated it frequently?

Occasionally.

When did you first hear of this controversy?

Several months since.

Do you know what Cain's heirs claim?

I understand they claim the lot known as the Emporium lot.

Do you know what the claim of Richards' heirs is?

I do not; but suppose it to be the Eagle Emporium lot.

Do you know what the claim of President Young is?

I do not.

Don't you know that boundary is one of the questions in dispute?

I do not. I understood the Cain estate claims the Eagle Emporium lot.

You know that President Young concedes the claim of Cain's heirs of the ground occupied by Cain's house, do you not?

I do not.

From whom did you understand that Cain's heirs claimed?

The first direct information, I believe, I obtained from Heber John Richards.

Who next?

I can't tell. I have heard a number of persons speak of it in connection with other contested claims.

You have told different parties what you know about this case, have you not?

At times I have, partially.

Have you ever talked with any of the attorneys about this case?

Yes; I have talked with LeGrand Young about the amount of land I considered M'r Cain owned.

You repeated to him the conversation you had with M'r Cain, did you not?

I told him about that conversation.

Don't you know you are required to attend here to testify to these things?

Yes.

Re-examined by Richards' counsel:

You stated, on yesterday, that in casual conversation you had stated to parties things that M'r Cain had told you. Did you, in these conversations, repeat in detail, as you have here, the conversation with M'r Cain?

At times I think I have.

JOSEPH BULL

Sworn to and subscribed before me this 20th day of September, A. D. 1872.

D. BOCKHOLT, *Clerk*,
Per E. W. EAST, *Deputy*.

302 SEPTEMBER 21, 1872—10 a. m.

JOSEPH HORNE, sworn on behalf of Brigham Young's claimants, says:

Were you acquainted with Joseph Cain and D'r Willard Richards in their lifetime?

Yes.

Do you know the lot on which the Eagle Emporium now stands?

Yes.

State whether or not you was appointed one of the appraisers of the estate of Willard Richards, deceased?

Yes; I was.

State whether or not as such appraiser you appraised as part of said estate any portion of the Emporium lot; and, if so, state what portion of it as near as you can?

(Objected to as irrelevant by Cain's counsel.)

We did appraise a portion of that lot—the north part of it—but the exact portion of it I cannot tell.

What building or buildings were on the part appraised?

There was a small adobe house on it at the time.

State, if you know, who lived in it at the time.

From the best of my recollection now, it was a portion of D'r Richards' family.

Who directed you to that property as belonging to Willard Richards?
Joseph Cain.
You know at that time when Joseph Cain lived—in what direction from his house was the portion of the lot appraised?
North.
Will you describe the position of the adobe house that stood on it as near as you can?
As near as I can remember, the house stood from forty to fifty feet from the north street, and from thirty to forty from the east street.
State whether or not the portion appraised extended to and included the corner where the Emporium building now stands?
Yes; it did.
State whether or not Joseph Cain was at that time the administrator of D'r Richards.
Yes; he was.

Cross examined by Cain's counsel:

In what year was this appraisement made?
I cannot tell the date. I think I have a journal that would enable me to tell.
With whom have you conversed about this case?
303 I have conversed with no one except M'r Williams on yesterday. Some time since I conversed with Joseph Cain and Charles Crismon.
Where was it you conversed with Joseph Cain and Charles Crismon?
This was on the street.
They stopped you to enquire about that appraisement, did they not?
Yes.
How long since was that?
A few weeks; could not say exactly.
What did you tell them?
The main question they asked me was if I remembered where that division fence stood, the fence running east and west. I told them I could not. They asked me if I was not one of the appraisers. Joseph Cain accosted me with "I see from the records that you were one of the appraisers of D'r Richards' estate"; and then the conversation about the fence occurred.
Was that all that happened and all that was said?
I don't suppose that was all that was said. We were talking about the land. I think he asked me some questions about his father's land, but I cannot remember all the conversation.
Was that all the conversation you remember?
I think so.
Will you state as near as you can all that occurred in this conversation with Joseph Cain and Charles Crismon?
I have already done so, as near as I can recollect.
Will you not again state in exact terms, as near as you can, what occurred.
The main question as far as I can remember was in regard to the fence; if I knew where the fence stood. I told them I could not tell; there was something further, as I stated, about the records. I just now remember that he said his father sent a protest to the judge in regard to this land *attending* to the piece of land we had appraised belonging to D'r Richards.
What did he say about that appraisement;
I don't recollect any further conversation.

Don't you remember that he told you that lot 6 had been appraised and there was nothing on the records to show what part of the lot was appraised?

He asked me what part of that lot we appraised, and I told him the north part, where the adobe house stood.

Will you give me the exact words he used, and your reply, with the same straightforwardness you gave your answer in your examination-in-chief?

I cannot give his exact words, nor my own. I can't state anything further than I have stated.

304 You have been through the Endowment House, have you not?

(Objected to, as irrelevant and not cross-examination, by Richards' counsel.)

That is my business, and not yours.

In passing through the Endowment House you took an oath, did you not?

(Objected to, as irrelevant and not proper cross-examination, by Richards' counsel.)

That is none of your business.

An' in doing so did you not swear to obey Brigham Young, as leader of the church, in all things, both spiritual and secular?

(Objected to, as irrelevant and not cross-examination, by Richards counsel.)

I never took any such oath.

What did you swear to?

(Objected to as before.)

That's none of your business.

Did you not take some kind of an oath? Did you not?

(Objected to as before by Richards' counsel.)

I will not answer any such question; it's none of your business.

You say you have talked with Joseph Cain, Charles Crismon, and Parley Williams, one of the attorneys in the case; with who else have you talked?

No one, lately.

Do you remember of any one at all?

One of Willard Richards' sons asked me one day in the drug store the position of that land or the amount of land his father had given to Joseph Cain, deceased. I told him I did not know the amount. I told him I knew he had a homestead there, and stated it was on the south part of that lot the Emporium buildings are on; that I had assisted his father in building a bake-house on it; that I had understood at the time I was working there he (M'r Cain) had got the land and little improvements there from Willard Richards.

What year was it you were working there?

I think it was in 1851; it might have been in 1852; can't be positive.

Are you not certain it was in 1851 or early in 1852?

I feel pretty certain it was.

On what were you employed?

I was laying adobe in the wall of Joseph Cain's house and doing some carpenter's work; some one else was working there.

What sort of a foundation had M'r Cain's new house?

I don't know about the main building.

For whom and by whom were you employed?

Joseph Cain.

305 What other buildings were there on the lot at that time besides the one you were engaged in putting up?

A small abode house near the Eagle Emporium, north of the building I was erecting.

Excepting these, were there any other improvements on the lot at that time?

I think there was not at the time I was working there.

Where did M'r Cain then reside?

I think, as near as I can remember, he lived in that little adobe house.

From whom did you understand that Joseph Cain got a piece of land there with the little improvements on it?

From Joseph Cain himself.

He never pointed out to you his boundaries, did he?

I can't recollect he ever did.

What was his language, as near as you can now remember?

As to the exact language, I can't give it. He told me he had got that piece of land from D'r Richards, and that he expected to build him a good house in front of the little one I was working on. He remarked to the effect that he liked the situation much better than the one where he had been living in the seventh ward.

You before stated that you understood from M'r Cain that he had got that piece of ground and the little improvements on it from the doctor. Did he not in addition to what you have last stated also state in substance what I have just repeated of your statement?

He stated he got the land with the improvements thereof.

Did he state when he got the land and improvements?

I do not know.

Did he specify the general improvements or refer to the improvements in general terms?

He said I have got the little place, house, or room, whichever he called it, and I am going to build another little room for a bake-house; and in the conversation gave me to understand that he intended to build a better house in front.

Are you acquainted with Le Grand Young?

Yes, sir.

You have talked with him about this matter, have you not?

He asked me some questions about it some time last year.

Have you talked with any person else about it?

I do not remember.

Have you been on the Emporium lot recently?

I have been in the building and yard connected with it.

How recently?

306 I had business there yesterday, and have been there every few days all summer.

Do you mean you have been in the yard every few days?

Yes.

Have you not been there recently for the purpose of looking at the lot with reference to this case?

No; I did not go for any such purpose.

After the time you were building that house for M'r Cain, did you have any conversation with him in reference to the Emporium lot, or any portion of it?

I don't recollect having any conversation on such subject from this time until I went to appraise the property of D'r Richards. Still, I might have had. I was familiar with him.

When was the doctor's property appraised?

I am not positive, but think it was in the year 1854.

What did M'r Cain say to you at that time?

I don't recollect, except pointing out the doctor's property.

Do you know where John Eddins used to live?

John Eddins used to live a little west of the Emporium building, and on the north of that lot.

Did you not include the ground on which he lived in your appraisement?

I cannot say; can't be positive.

Can't you tell, in substance, what M'r Cain said at that time?

I can't remember in his remarks his speaking anything about M'r Eddins.

Don't you remember of his saying that the ground on which M'r Eddins lived belonged to the doctor?

I don't remember exactly what he did say.

Who was present when you had this conversation?

Thomas Rhodes, Joseph Cain, and myself.

Where were you on the lot?

On the premises near where the Emporium now is.

Who is Thomas Rhodes?

A man now dead, and was one of the appraisers.

Don't you remember being on the Eddins lot at that time?

No; I remember coming on to the corner near this little house.

Did Joseph Cain show you all the doctor's property?

Yes.

What other pieces did he show you?

I can't state exactly. He showed a lot in the fourteenth ward and a mill up north. I don't remember any other now.

Did Joseph Cain go with you to that mill?

Yes.

307 Did you ever have any talk with him after the appraisement in relation to it?

I don't recollect any.

Don't you remember the appraisement you made on the Emporium lot was the Eddins property, and that afterwards Joseph Cain called your attention to it and told you you had made a mistake in appraising it, and that he afterwards called the attention of the probate court to it?

No, I do not.

Did Joseph Cain point out the line to you when you made the appraisement of the Emporium lot?

I think he told me the boundaries.

Where were those boundaries?

Cannot say definitely, but there was an open space south of this little house, I think about seven rods, which was embraced. There was a slight fence between Joseph Cain and D'r Richards running east and west, which was the south line of the ground we appraised.

How far did that fence extend to?

I can't say how far, whether it extended to the Longstroth property or not.

Did it extend as far as seven rods back?

Yes, I think it extended to that or more.

What was the fence made of?

I think partly pole fence. My impression is it was poles and boards.

In what direction did I understand you that fence ran?

Due west.

What side of Joseph Cain's house was that vacant space?

The vacant space I refer to was on the north of this fence, and north of Joseph Cain's house.

There was a pole and board fence, the one seven rods long, between the land you appraised, on the Emporium lot and Joseph Cain's house, was there?

Yes.

Do you remember that fact as distinctly as the other you have related?

I am not positive as to the length of the lot, but am positive such a fence was there.

Are you not also positive that fence extended clear through, or nearly so, of the east half of the Emporium lot?

I am not positive, but believe it ran seven or eight rods.

How far from M'r Cain's house did it run?

I can't tell the exact distance, but not very far.

Don't you remember there being a pair of bars, or slip gap of poles, near the corner of that fence, near Cain's house?

308 I cannot say.

In your conversation with Joseph Cain and Charles Crismon, did you not tell them that you had no remembrance of what portion of that lot you appraised?

No, I never told them so.

What did you tell them on that subject?

As near as I can recollect, I told them about what I have stated here.

Did you not tell them you could not remember whether it was on the east or west portion of that lot and that it had been so long you had forgotten all about it until Joseph Cain showed you a copy of that appraisement or told you about it?

I never told him that nor anything in substance like it.

Where did you and M'r Cain go after the time you got through with the appraisement?

I cannot say now, where.

How long were you on the premises?

I can't say; not long, I suppose.

Did M'r Cain point to the fence you have spoken of as being the southern boundary of the doctor's property?

I think he did.

How far from the fence were you standing at the time?

We walked on the lot and around the house referred to.

When he pointed to this fence were you back of that house?

I cannot say whether we stood near the house; I think, probably, we were.

Did he point to the middle of the fence?

I cannot say.

How far was that fence from the little house?

Near four rods.

When Joseph Cain said he had got that piece of land and a little improvements on it when you were working for him, by improvements you understood him to refer to building on a building on the lot when he got the same?

Yes, a very small adobe room, one story on it, when he obtained it from the doctor.

Have you not had a talk with some of the parties to this suit about that appraisement recently?

No, not by way of inquiry.

May you not have been mistaken as to the portion of the lot you appraised?

No, I am not mistaken. The portion of ground we appraised lay on the corner.

309 Did you not appraise what is now known as the Kimball & Lawrence corner on the opposite side of the street?

No.

Are you positive of that fact?

My impression is we had nothing to do with that.

The Emporium lot, the one in the fourth ward, is all you remember appraising?

Yes.

If you had appraised any more you would have been as likely to remember it as distinctly as the other, would you?

I think not, because my attention has been called directly to this.

When your attention was first called to this case you did not remember it any more than the balance, did you?

Not until after a short reflection.

Did not Heber John Richards tell you that you had appraised that corner, when he spoke to you?

He commenced, I think, by remarking, "I believe you were one of the appraisers of my father's property."

Did he not ask you if you did not appraise that corner property?

I don't recollect what question he asked, now.

You have no recollection what was done after Mr. Cain pointed out the property?

We looked around the lot. I don't recollect whether we immediately went into Mr. Cain's house, or what business I went at. I cannot now say.

In leaving the lot, where did you go?

Can't tell.

You know which way you went on the lot?

Yes, we came in from East Temple street.

How much did you appraise that lot at, or a portion of it?

I don't remember.

The lot was one of the most valuable lots in the city, was it not?

It was one of the most valuable, I suppose, at that time.

About how much was the value of the house where Mrs. Braddock lived?

I cannot say, perhaps two or three hundred dollars.

Re examined by Richards' counsel:

When were you first requested to come here to testify, and by whom?

On yesterday, by yourself (P. L. Williams).

JOSEPH HORNE.

Sworn to and subscribed before me, this 21st day of September, A. D. 1872.

D. BOCKHOLT, *Clerk*,
Per E. W. EAST, *Deputy*.

310 SEPTEMBER 24TH—10 a. m.

JESSE W. FOX, sworn on behalf of Brigham Young, says:

How long have you resided in this Territory?

Twenty-three years.

Have you been the surveyor of Salt Lake County, and if so, how long?

I have been the surveyor of Salt Lake County for twenty years.

Were you acquainted with Joseph Cain, in his lifetime; if so, where did he live?

I was. He lived on lot 6, block 69, plot A, on a portion of the Emporium lot, as now called.

State whether or not you ever did any surveying on that lot for Joseph Cain, and if so, describe the parcel of land so surveyed, and state the time it was done as near as you can.

(Objected to as leading by Cain's counsel.)

I surveyed for Joseph Cain five lots east from the southeast corner of the lot, running north five rods, thence west to the land claimed by John Eddins, thence south five rods, thence east to the place of beginning. I cannot say what year this was done.

At whose instance did you do this surveying?

Joseph Cain's.

Who was with you when it was done?

Joseph Cain.

State whether or not you had any conversation with him at that time in relation to this ownership on that lot, and if so, state what it was.

I have no recollection of any particular conversation.

Who directed you as to the boundaries you then surveyed?

Joseph Cain.

State whether or not he told you the ground you surveyed belonged to him.

(Objected to by Cain's counsel as leading and irrelevant.)

That was my understanding.

From whom did you get that understanding?

Probably from him. He solicited me at the same time to build me a house on the piece of ground probably belonging to Longstroth.

State, if you know, the length from east to west of this little piece of ground so conveyed.

I don't remember the length. It was back to Eddins'.

State, if you know whether John Eddins lived on that lot at the time you made that survey.

I think he did. There were improvements of his that he made on that lot at the time.

311 State whether you ever made any survey or measurement of that piece of land after that; and, if so, at whose instance, and where.

I measured the front twice since, at the instance of Samuel Richards, some five or six years since; maybe longer.

(Answer objected to as irrelevant by Cain's counsel.)

In what capacity was Samuel Richards acting when he got you to measure that ground?

(Objected to as irrelevant by Cain's counsel.)

I suppose as agent or administrator of the estate of Joseph Cain, deceased.

What was the object of these measurements?

(Objected to as irrelevant by Cain's counsel.)

To determine the exact point of division on the extent of the east front.

State what extent of land was so measured, and where it was situated.

(Objected to as irrelevant by Cain's counsel.)

Five rods north from the southeast corner of said lot 6.

State, if you know, whether Joseph Cain claimed to own any part of that lot except the part you conveyed to him.

I have no knowledge of his ever claiming to own any more than five rods front extending back to the Eddins claim.

Cross-examined by Cain's counsel:

Did you keep any minutes or records of the survey you made for Joseph Cain?

I don't think I did. I don't generally unless requested.

When you make a survey in official capacity you make some record of it, do you not?

No; not always.

You say that when you made that survey you can't remember any portion of the conversation you had with Joseph Cain. The matter rests wholly in your memory, there being no record, does it not?

Yes; I don't know that I have any record.

Was an old lady by the name of Ogden living on the lot when you made the first survey?

I think not until afterwards.

At the time you made the survey, did you not also survey a piece for M'r's Ogden to build her house on?

I cannot remember.

Don't you remember surveying or laying off a building spot at the time you made that first survey?

I don't remember it.

May you not have done so at that time?

I have no recollection of it. I may or may not have done so.

312 Can't you tell what year you made this survey in?

Not from memory; can't tell the year.

Was it during the lifetime of D'r Richards?

I am not certain; I think afterwards.

Do you know where you were when Joseph Cain requested you to survey that lot?

I was perhaps here in the city; can't say where.

You don't remember what he said at the time, do you?

He thought that Eddins had got over his line; there was an old stable or some kind of a foundation there, and Cain wanted to establish his line.

And to ascertain that fact M'r Cain had the survey made, did he not?

That was one object.

What was the result of your survey; did it show that that foundation or stable was on Cain's property?

I think it was; a little over a few inches, perhaps.

Do you remember where on Eddins' lot that foundation or barn stood; was it not back, or nearly so, of what is now known as the Ransohoff property?

I can't say whether that stable was on the extent of the southeast corner; I think this stable or foundation was nearly opposite the northwest corner of the ground I surveyed for Cain.

Was it west of the west line of the survey which you made?

It was.

Don't you think this building was a foundation, and not a stable?

If I remember correctly, opposite to Cain's line there was a pig-sty, a privy, a stable, and a quantity of rubbish, and I think there was a stone foundation.

It was this stone foundation which you found reaching over on Cain's ground, was it not?

I think Cain's line was a few inches over on the ground claimed by Eddins.

The only line in dispute was the west line, was it not?

Yes.

In measuring did you run up to the northeast corner of Eddins?

I think I commenced at the southeast corner of the lot. I don't think I run to the northeast corner of Eddins; I might have done so.

The object of running the line from east to west was to establish the west line, was it not?

Yes.

Do you remember whether there was any fences back there?

I think there was a kind of a fence.

On which side of the Eddins property was it?

313 I presume it was designed to be on the line between Eddins and Cain.

In making that survey you say you saw a stake on the southwest corner of M'r Cain's property?

I think there was an old stake there.

In your survey did you find that stake to be at the right place between M'r Cain and Eddins?

I am not positive. My impression is it was too far east, a few inches.

You made that measurement with a pole made from a piece of plank, did you not?

I think not. It was made with a chain.

The survey was made about the time that John Eddins obtained that property, was it not?

I cannot say whether it was a year or two years afterwards. It was after that time.

Do you remember seeing a stake at the north corner of Eddins' ground at the time of the survey for Cain?

I don't remember going to it; I may or may not.

You know there was one there, do you not?

I surveyed it, and put one there.

Who was with you at the time you put that stake there?

I think Eddins was with me.

Was not Stephen Longstroth there?

Perhaps he was; I don't remember.

Was Peter Van Valkenburg there?

I don't recollect.

Was D'r Richards there?

Don't remember.

Was Joseph Cain there?

I don't remember definitely; they might all have been on the ground.

Don't you remember there being a fence post of scantling near that stake?

I think the fence was of posts and poles, the north fence on the street; I can't remember about the post of scantling.

Don't you remember there being a pole-fence beginning at a stake and running south?

I think there was; can't be positive; I would naturally put one there.

When you put that stake there, did you not also put some west of there, on the same line?

I might have taken Bullock's corner for a standard. I think I did.

At that time did you not also run to the Eagle Emporium corner?

314 I think likely I did, as I generally did, but in this instance I do not remember.

At the time you planted the stakes you have spoken of you made a survey, did you not?

I did.

How long before the one you made for Cain?

I can't say; should judge from one to two years.

It was late in the evening when you made it, was it not?

I don't remember the hour of the day.

From what point did you run in establishing the stake on the southeast corner of Eddins' lot?

I think I run from the southeast corner of lot 6.

From there where did you run?

South, to the southeast corner of Eddins' lot, I think.

Had you your compasses with you?

Yes; I always use them in making surveys.

Did you not also run a line from the southeast corner of lot 6?

I do not remember.

State the direction you would run from the northwest corner of lot 6, and what you would do in making a survey of lot 6 (you then made, I mean). What was your ordinary and usual way of making such survey?

Would measure from the northwest corner to the east line of Eddins' survey; would then run south line to the southeast corner; thence west to the southwest corner. If I wanted to test them, run north again to the northwest corner.

Do you remember whether Moses Whitaker was present when that survey was made?

I don't know him that I know of.

Don't you remember that Joseph Cain was present when that survey was made?

I do not remember.

Were there not several persons present?

There may have been, but don't remember who they all were.

Don't you think that the east line of Eddins was in the center of the lot?

No, it was east of the center.

Are you positive of that fact?

I would not be positive from my recollection of the survey made at that time.

How far did I understand you to say that line, I mean the west line you established for Cain, reached over on the stable or foundation spoken of by you?

315 I think it reached over my former line on to Eddins; but very little, a few inches.

At whose instance did you make the first survey?

I presume at D'r Richards'. It was at his consent anyhow.

Did not Joseph Caine also request it?

I don't recollect.

When D'r Richards made that request did he tell you what it was for?

I said I presume it was from his request. I don't remember any conversation.

At the time the first survey was made John Eddins was not living on the lot, was he?

No; I think there was no house there.

There was no building on that lot at that time west of M'r Cain's, was there?

I think there was none.

Who was the owner of that portion of the lot west of the east stakes you drove at that time; was not Willard Richards?

I presume so, unless he had disposed of a portion of it to Longstroth.

Was not that survey made to establish the line between Doctor Richards' and Joseph Cain's?

I did not so understand it. It was made to establish the line between the Eddins piece, Doctor Richards' and Joseph Cain's; the object was to establish the east line of the Eddins piece.

How do you know that fact?

I was employed to make a survey, or to measure off a piece of land there, for John Eddins.

Do you know whether there was any fence through the lot at that time?

I think there was not any.

Was there not a remnant of a fence running north and south near the line?

I don't recollect.

Don't you remember of a fence being built soon afterward on the line you run then?

I think there was.

Do you remember how soon after?

I do not. I think Eddins had a pole fence most of the way on that line.

Don't you remember M'r Cain also built a fence between him and Eddins?

No; I do not remember it. I have a faint recollection of a fence there of boards standing up endways.

316 Don't you remember of some one digging a hole in the ground with a spade at the time when you drove a stake at Eddins' northeast corner?

I don't remember.

At the time you made this first survey you did not know anything about what Joseph Cain owned in there, did you?

Not to my recollection.

Re-examined by Richards' counsel:

You say that the west line of M'r Cain's ground when you made his survey reached a few inches over Eddins'?

When the city was first surveyed there was sage brush, grease wood, etc., and since the rubbish has been cleared off there is a discrepancy in the measurement; some of the first surveys do not hold out.

You say you would not be positive, from the survey made at the time, that John Eddins' east line was east of the center of the lot. Are you sure of that from any other circumstances? And if so, state it.

(Objected to because it is no cross-examination by Cain's counsel.)

In surveying recent surveys I ascertained that the line was east of the center of the lot, as near as I can remember. The east line of Eddins was about 14 feet east of the center of the lot.

Amongst the rubbish spoken of by you as being opposite the west end of M'r Cain's ground, when you made his survey, you say you think there was a rock foundation. Are you sure there was any such foundation there?

I think there was.

JESSE W. FOX.

Sworn to and subscribed before me this 24th day of September, A. D. 1872.

D. BOCKHOLT, *Clerk.*
Per E. W. EAST, *Deputy.*

Testimony in behalf of Stringfellow Bro's.

NOVEMBER 21ST, 2 p. m.

SAMUEL W. RICHARDS, called and examined on behalf of Samuel and George Stringfellow, claimants, says:

Are you the same person who has already testified that you were one of the administrators of Joseph Cain, deceased?

I am, and have before testified in this case.

Who was your coadministrator?

Elizabeth Cain, widow of Joseph Cain, deceased.

Did you, with your coadministrator, ever petition the probate court of Salt Lake County for authority to sell any portion of the real estate called the Emporium corner, as belonging to the estate of Joseph Cain, deceased?

I did, with my coadministrator.

(Counsel put into witnesses hand a paper endorsed, "Petition of
317 Administrators Estate of Joseph Cain, for an order to sell Real Estate. Filed Nov. 4, 1869." Paper marked "Exhibit Stringfellow No. 1.")

Is this that petition?

Yes.

Was an order made by the probate court on that petition?

There was, to the best of my recollection.

(Objected to by Cain's counsel on the ground that the order itself is the best evidence.)

Did you, in consequence of any order of the probate court of Salt Lake County, negotiate for the sale of any portion of the real estate of the estate of Joseph Cain, deceased?

(Objected to by Cain's counsel on the ground that the record of the probate court, showing the lawful authority to sell, has not been introduced.)

I did.

Did these negotiations result in agreement to sell; and, if so, state to whom and for what price?

(Objected to on behalf of Cain's and Richards' heirs on the ground that the records of the probate court have not been introduced showing authority regularly obtained to sell any portion of said estate.)

These negotiations resulted in a sale of a piece of property to Samuel and George Stringfellow for twenty-five hundred dollars.

Was a deed made?

(Objected to on behalf of Cain's and Richards' heirs on the ground that no proper foundation has been laid, the records of the probate court conferring lawful authority to deed, not having been offered.)

There was.

Was the sum of twenty-five hundred dollars you have mentioned ever paid; if so, when and to whom?

(Objected to as irrel'vant by Richards' and Cain's counsel.)

The sum of twenty-five hundred dollars as aforesaid was paid by Stringfellow to the administrators.

(Counsel for Stringfellow placed in the witness' hand a paper marked "Exhibit Stringfellow No. 2," and asked witness to state whether or not that is the paper given at that time as evidence of that sale?)

It is the same.

State whether or not Elias Smith, who signed as witness to said deed, is the same person who signed as "E. Smith" at the end of the acknowledgement.

Yes; he is the same person.

State whether or not you and your co-administrators ever reported the sale to the probate court of said Salt Lake County.

(Objected to by Cain's counsel as incompetent or irrelevant, the record being the proper and best evidence.)

318 There was a report made to the probate judge.

Counsel placed in witness' hands a paper marked "Exhibit Stringfellow No. 3," and asked, Is this that report?

Yes; it is.

State what was the value on the 10th day of December, 1869, of the lot of ground and improvements described in "Exhibit Stringfellow No. 2."

(Objected to by Cain's and Richards' heirs as irrelevant and incompetent.)

Its value was twenty-five hundred dollars.

Was that its full market value at that time?

Yes; it was the highest figure offered for it.

Witness cross-examined by Cain's heirs' counsel:

At the death of Joseph Cain, deceased, was he indebted to any one?

He had some debts unpaid, as I have been informed.

To what amount?

I do not know.

Do you know whether the amount was great or small?

I can't state anything definite. It was reported that there was some considerable amount of debts, but they never were presented to me. The widow carried on the business for some time.

Were not all the claims ever presented to the administrator by any one against the estate of Joseph Cain, deceased, and which existed at the date of his death, paid from his personal effects long before the application to sell any real estate?

I can only state that I think they were.

Was the sale made by the administrator for the purpose to pay any indebtedness of Joseph Cain, deceased?

I think not.

Will you explain the nature of the indebtedness for the payment of which the sale was made?

It was for the support of the family and for improvements, taxes, etc.

How long after the death of Joseph Cain were the improvements, the indebtedness for the support of the family, and the taxes accrued, on account of which the sale was made?

From three to ten years after his death.

How long was it after his death before your appointment as administrator?

More than ten years.

S. W. RICHARDS.

Subscribed and sworn to before me this 21st day of November, A. D. 1872.

D. BOCKHOLT, *Clerk*,
Per E. W. EAST, *Deputy*.

319 Counsel for Stringfellow offers in evidence a certain copy of a paper marked "Exhibit Stringfellow No. 1."

(Objected to by counsel for Cain's and Richards' heirs as irrelevant, incomplete, and failing to show any title, and there not being any proper foundation laid, and there not being any evidence recorded or otherwise showing that the heirs of Joseph Cain were ever served with process, or were in any way a party to the proceeding in the probate court.)

Counsel for Stringfellow next offered in evidence a certified copy of an order from the records of the probate court of Salt Lake County, hereto annexed and marked "Exhibit Stringfellow No. 4."

(Objected to by counsel for Cains and Richards claimants, on the ground that this order is a garbled portion of the records, is incomplete and void upon the face, and there is no evidence, recorded or otherwise, introduced showing that the heirs of Joseph Cain, who were minors at the time the order was made, were not parties to the proceeding in which the order was made, either in person, by guardian, or next friend, and that no service of process or notice has ever been served on said children, or their guardian, or next friend.)

Counsel for Stringfellow next offered in evidence a paper marked "Exhibit Stringfellow No. 2," referred to in the testimony of the last witness.

(Objected to by counsel for Cain's and Richards' heirs on the ground that no lawful authority for its execution has been shown and contains none of the recitation upon its face which by law is necessary to its validity.)

Counsel for Stringfellow next offered in evidence a paper marked "Exhibit Stringfellow No. 3."

(Objected to by counsel for Cain's and Richards' heirs on the ground that it is a garbled portion of the record and no evidence has been introduced to show its validity.)

Counsel for Stringfellow next offered in evidence a certified copy of an order from the records of the probate court of Salt Lake County confirming the sale of the property mentioned in the deed from the executors of Cain to Samuel and George Stringfellow, marked "Exhibit Stringfellow No. 5."

(Objected to by counsel for Cain's and Richards' heirs on the ground that it does not appear that the children of Joseph Cain or any one for them were parties in the matter in which the order was made, or that any process or notice was ever served on said children or any one representing them, and that said order is void on its face.)

Counsel for Cain's heirs and counsel for Richards' heirs, for the purposes of this proceeding or suit, not being bound thereby any other,

320 admit that the real cash value of said property sold by the administrators of the estate of Joseph Cain was at the time of its sale to Samuel and George Stringfellow, *was* two thousand five hundred dollars.)

Counsel for Brigham Young offered in evidence a paper marked "Exhibit No. 4."

(Objected to on behalf of Cain's heirs on the *the* ground that there was no priority as to them or their deceased father to the deed.)

NOVEMBER 22D, 1871.

William Jennings, in his own behalf, offered in evidence eight deeds, fastened together and marked "Exhibit O."

(Joseph Cain and Elizabeth T. Crismon, by their counsel, object to the deeds of M'r's Cain on the ground that they are not parties to it, and that the same is void. The other deeds offered in said exhibit are objected to by the counsel of Cain's heirs on the ground that the children of Joseph Cain are not parties to any of them, and that said deed, nor either of them, show any title, or tend to do so, in William Jennings, to the property in dispute, and that a portion of said deeds cover ground not contested by him, the said William Jennings.)

A. Miner, counsel for Zion's Co-operative Institution, offer' in evidence documents marked Exhibit A, Z. C. M. I., in support of their claim set forth in their filings.

(Objected to by counsel for Cain's heirs on the ground that neither Joseph Cain, deceased, or his heirs or widow, are parties to said deed, and that the same do not show any title in the claimant.)

Counsel for Cain's heirs offered in evidence a certified copy of the appraisement of the estate of Willard Richards, deceased, on file in the office of the probate court of Salt Lake County, marked "Exhibit F."

NOVEMBER 23D, 1872—10 a. m.

M'r's ELIZABETH RICHARDS, recalled on the part of Stringfellow, says:

Are you the same person who has already testified in this proceeding as the wife of Joseph Cain, deceased?

Yes, sir.

When were the letters of administration upon the estate of Joseph Cain, deceased, first applied for?

The first application was made some time about December, 1864.

With whom, from the time of Joseph Cain's decease, did your children, Joseph and Elizabeth, reside?

With myself.

(Objected to by Cain's counsel as irrelevant.)

Who was their guardian?

Samuel W. Richards.

By whose authority was Samuel W. Richards their guardian?

321 (Objected to as irrelevant by Cain's counsel, and not being the best evidence, if the fact ever existed.)

He was appointed by myself, and by my authority.

State the date of his appointment.

(Objected to by Cain's counsel for the same reason as assigned in the foregoing.)

There was no appointment of court. Mr. Richards, by my request, acted after my marriage to him, which took place a few years after Mr. Cain's death.

Where were your children residing and under whose guardianship were they from November, 1869, to the 1st of May, 1870?

(Objected to as irrelevant by Cain's counsel.)

With myself and under the guardianship of Mr. S. W. Richards and myself.

Are you and your children in possession of any portion of the east half of the Emporium lot at the present time, and if so, what?

Yes; Nos. 53 and 55, and had possession of the Stringfellow property until its sale.

How long have you possessed the premises Nos. 53 and 55, and how long were you in possession of the Stringfellow property before its sale?

We were in possession of the Stringfellow property since the death of my husband up to the date of its sale, and have been in possession of the other pieces ever since that time.

ELIZABETH CAIN.

Subscribed and sworn to before me this 23d day of November, A. D. 1872.

D. BOCKHOLT, *Clerk*,
Per E. W. EAST, *Deputy*.

GEORGE STRINGFELLOW, sworn on the part of and in the behalf of Stringfellow, says:

What is the extent, if any, of your possession of the lot known as the Emporium lot in controversy in this proceeding?

I am in possession of that portion described in my deed, which is already in evidence.

How long have you been in possession thereof?

I have been in possession ever since the date of our purchase in December 10, 1869. My possession is that of a tenant in common with my brother Samuel.

GEORGE STRINGFELLOW.

Sworn to and subscribed before me this 23d day of November, A. D. 1872.

D. BOCKHOLT, *Clerk*,
Per E. W. EAST, *Deputy*.

322 Counsel for Stringfellow then offered in evidence a certified copy of letters of administration on the estate of Joseph Cain, deceased, granted to Samuel W. Richards and Elizabeth Cain, dated December 20, 1867.

D. BOCKHOLT, sworn on behalf of Stringfellow, says:

What is your occupation?

I am clerk of the probate court of Salt Lake County.

Are the certified copies, marked Exhibit Stringfellow Nos. 1, 3, 4, 5, and 6, copies of original papers and records in the custody of the probate court of Salt Lake County.

They are.

D. DOCKHOLT.

Cain's counsel offered in evidence a certified copy of a document marked "Exhibit G." In the matter of the application of the heirs of Willard Richards, deceased, and the heirs of Joseph Cain, deceased, to lot 6, block 69, plot A, Salt Lake City survey, present, Stephen DeWolf, attorney for Cain's heirs, LeGrand Young, attorney for Richards' heirs, and William Jennings appearing for himself.

OCTOBER 24TH, 1872.

Mr. William Jennings offered in evidence a deed from William Price to William Jennings for forty feet north front, running ten rods north

and south, on the Eagle Emporium lot, dated April 7th, 1869, marked "Exhibit A."

(Objected to by Cain's counsel as incompetent, because no title has been shown in William Price to the fourteen feet constituting the western part of the eastern half of lot 6, block 69.)

Do you acknowledge this to be the deed executed and given by you to W'm Jennings for the piece of land therein described?

Yes.

Of whom did you purchase this piece of land?

I bought it of John Eddins.

Did you get a deed from him for this piece of land?

Yes.

Is that deed on record?

(Objected to by Cain's counsel as irrelevant and secondary.)

I believe it is.

What year did you purchase this land from John Eddins?

(Objected to by Cain's counsel as incompetent and secondary evidence to the deed from Eddins to Price, being the best evidence of purchase.)

In the year 1855.

323 Did you put any fence on that piece of land?

Yes, sir.

State the boundary of the fence you put up.

As near as I can remember I put it on the east line of my land, with board fence, and on the northwest, pickets. I subsequently built a fence on my west line between me and Blazzard.

What year did you build that fence?

In 1856.

Was Joseph Cain living at that time?

Yes.

Was he aware of your building the fence?

Yes.

Did he ever object to it?

No, sir.

Has any one of Joseph Cain's heirs or his administrator, or any one, objected to the fence being on that land?

No; no one that I know of.

Cross-examined by Cain's counsel.

Was there any survey made of this ground at the time you bought it of M'r Eddins?

There was no survey made at that time that I know of; I measured it myself and took Eddins' statement as to his corner.

Do you mean you took his statement of his east corner?

I mean both his east and west corners.

Was there at the time any stake or fence on what he informed you was the eastern boundary of the forty feet sold you?

I believe there was some kind of a rough fence—I think a pole fence; I put mine on the same line as near as I can remember.

Can you state definitely the time when you built this fence?

It was in March or April, 1856.

How soon after building the fence did you leave here?

I left here in April, and built the fence previous to leaving here.

When did you return?

I returned the following fall, either in August or September.

Did any one occupy the lot so purchased by you in your absence, and if so, whom?

I left my family living there, and when I returned she (my wife) had rented it to Captain Hooper and he was living on the lot when I returned. On reflection, I wish to correct my former statement that I returned here in August or September, 1856. It was in the winter, I think, in December, 1856. I then returned to Carson Valley in the spring of 1857, and returned here again in August or September following.

324 Is your memory definite about your building this fence before going to Carson the first time?

Yes, sir.

Do you remember seeing Joseph Cain after building this fence before going to Carson?

I can't state positively, but I presume I saw him every day. I don't remember any particular circumstance positively.

Do you remember seeing him on your return from Carson and before you went there the second time?

I don't positively remember seeing him. Remember seeing members of his family.

Do you remember seeing him after your second return from Carson in the fall of 1857?

I can't be positive; probably I did.

Did you at any time after purchasing the lot you have spoken of from Eddins have any conversation with Joseph Cain about it?

I don't remember having any conversation with him. I think I saw Joseph Cain once in awhile. He was sick, but cannot state the time.

Cross-examined by Le Grand Young on the part of the heirs of W. Richards, deceased, and Brigham Young:

Did you ever have that piece of land which you purchased of John Eddins surveyed?

Yes; I think we had it surveyed to determine the line between me and Blazzard.

Do you know the exact distance from the northeast corner of lot 6, block 69, plot A, to the northeast corner of the piece of land you bought of Eddins?

No; I never knew the exact distance.

Did any one build a fence on that land of yours subsequent to the one you built and which you have referred to?

Yes; I had it rebuilt.

Was it on the said line of the old fence?

I think it was about eight inches east of my right line as determined by the surveyor. I put my last fence referred to about eight inches west, as near as I can remember.

Are there any remains of that fence on that ground at present?

No, sir.

Has there been any fence built on your east line since you sold your property?

Not that I know of.

WILLIAM PRICE.

Subscribed and sworn to before me this 24th day of October, A. D. 1872.

D. BOCKHOLT, *Clerk*,
Per E. W. EAST, *Deputy*.

325 William Jennings introduces the deeds following, marked "Exhibit A," to wit:

1st. A quitclaim deed, duly executed, acknowledged, and delivered

from the said Elizabeth Cain to Charles King, dated April 15th, 1864, and by the terms of which, for the consideration of twenty hundred dollars, the said Elizabeth Cain sold, released, quitclaimed, and transfer'ed all of her right of claim, interest, and possession to the said Charles King, his heirs or assignees, of and to the portion of said half lot first described in the award to William Jennings.

2d. A like deed from the said Charles King to Nathan S. Ransohoff and Eli Ransohoff, dated April 26th, 1864, by the terms of which the said King, in consideration of twenty-five hundred dollars, convey' to the said Nathan S. Ransohoff and Eli Ransohoff, their heirs and assigns, all his right, title, interest, and possession in and to the portion of said lot last referred to.

3d. A like deed from the said Nathan S. Ransohoff, Eli Ranhsohoff, and one Conrad Prag and Abraham Gaus, members of the firm of N. S. Ransohoff & Co., to said Brigham Young, dated March 1st, 1869, by the terms of which the said members of said firm, in consideration of eighteen thousand dollars, conveyed to the said Brigham Young, his heirs and assigns, all their right, title, interest, and possessions in and to said portion of said lot last mentioned.

4th. A like deed from the said Brigham Young to the said William Jennings, dated August 1st, 1869, by the terms of which the said Brigham Young, in consideration of twenty thousand dollars, conveyed to the said William Jennings, his heirs and assigns, all of his right, title, interest, and possession in and to the portion of said lot last mentioned.

5th. A deed from the said Brigham Young to the said William Jennings, dated April 15th, 1861, by the terms of which the said Brigham Young, in consideration of eighteen hundred dollars, conveyed to the said William Jennings, his heirs and assigns, all of his right of claim, interest, and possessions in and to that portion of the east half of said lot 6, embraced in the second discription of the award to William Jennings.

6th. A like deed from the said Brigham Young to the said William Jennings, dated August 1st, 1869, by the terms of which the said Brigham Young, in consideration of one thousand dollars, conveyed to the said William Jennings, his heirs and assigns, all of his right of claim, interest, and possession in and to the following-described portion of said lot 6, to wit: Beginning at a point on the north line of said lot 135 feet west of the northeast corner of the same, and running west 16 feet, thence south 107½ feet, thence east 16 feet, thence north 107½ feet, to the place of beginning.

326 7th. A like deed from William Price to William Jennings, dated April 7th, 1869, by the terms of which the said William Price, in consideration of forty-five hundred dollars, conveyed to the said William Jennings, his heirs and assigns, all of his right, title, and possession in and to the following-described portion of said lot 6, to wit: Beginning on the north line of said lot, at a point 151 feet west of the northeast corner thereof, thence west 40 feet, thence south 10 rods, thence east 40 feet, thence north 10 rods, to the beginning.

8th. A like deed from the heirs of Willard Richards, deceased, to the said William Jennings, dated January 20th, 1872, by the terms of which said heirs, in consideration of five hundred dollars, conveyed to the said William Jennings all their right, title, interest, and possession in and to that portion of said lot last described.

The following deeds were introduced and marked "Exhibit A, Z. C. M. I.," to wit:

1st. A quitclaim deed from Brigham Young to Bassett & Roberts,

dated April 10th, 1865, by the terms of which said Brigham Young, in consideration of twenty-eight hundred dollars, conveyed to the said Bassett & Roberts, their heirs and assigns, all his right of claim, interest, and possession in and to that portion of said lot last described in the award to Brigham Young by the judge.

2d. A like deed from the said Basset Roberts to Hiram B. Clawson, dated March 26, 1870, by the terms of which the said Bassett Roberts, in consideration of twelve thousand five hundred dollars, conveyed to the said Hiram B. Clawson, his heirs and assignees, all his right of claim, interest, and possession in and to said last-named portion of said lot.

3d. A like deed from the said Hiram B. Clawson to Zion's Co operative Mercantile Institution, and incorporated body, dated September 16, 1871, by the terms of which the said Hiram B. Clawson, in consideration of twelve thousand five hundred dollars, conveyed to said corporation all of his rights of claim, interest, and possessions in and to the portion of said lot last mentioned.

Brigham Young introduced a quitclaim deed marked "Exhibit 4," from the heirs of Willard Richards, deceased, to him, dated January 20, 1872, by the terms of which the said heirs, in consideration of fourteen thousand dollars, conveyed to the said Brigham Young, his heirs and assignees, all their right of claim, interest, and possession in and to the following-described portion of said lot, to wit: Beginning at the north-east corner of said lot, and running thence south 107 feet 6 inches, thence west 151 feet 6 inches, thence north 107 feet 6 inches, thence east 151 feet 6 inches, to the beginning.

327 The counsel of George and Samuel Stringfellow introduced in witness the following documents, marked Exhibits Stringfellow 1, 2, 3, 4, and 5, to wit:

EXHIBIT STRINGFELLOW No. 1.

To the honorable Elias Smith, Judge of Probate:

We, the undersigned, administrators of the estate of Joseph Cain, beg leave to represent that said estate is at present involved in consequence of loaning money to erect buildings thereon, upon which interest is being paid, and also in consequence of taxes accumulating, while rents have been rapidly declining, by which the obligations and expenses of the estate have to be maintained.

We therefore petition that an order of court be granted for the sale of a portion of said estate, situated on East Temple street, in this city, to assist in liquidating obligations now existing of a pressing nature.

Very respectfully,

S. W. RICHARDS.
ELIZABETH CAIN.

SALT LAKE CITY, *December* 4, 1869.

(Endorsed:) Stringfellow No. 1. Petition of administrators of estate of Joseph Cain for an order of sale of real estate. Filed December 4, 1869.

TERRITORY OF UTAH,
Salt Lake County, ss:

I, D. Bockholt, clerk of the probate court in and for the county of of Salt Lake, in the Territory of Utah, do hereby certify that the foregoing is a full, true, and correct copy of the original paper filed in my office

by S. W. Richards and Elizabeth Cain, administrators of the estate of Joseph Cain, deceased, bearing date December 4, 1869.

In witness whereof I have hereunto set my hand and affixed the seal of said court this twenty-sixth day of November, A. D. 1872.

[L. S.] D. BOCKHOLT, *Probate Clerk.*

EXHIBIT STRINGFELLOW No. 2.

[Internal-revenue stamp cancelled $2.00.]

This indenture made this tenth day of December in the year of our Lord eighteen hundred and sixty-nine, between Samuel W. Richards and Elizabeth Cain, of Salt Lake City, in the county of Salt Lake, and Territory of Utah, administrators of the estate of Joseph Cain, late of said county, deceased, of the first part, and Samuel Stringfellow and George Stringfellow, of the said city and county, party of the second part, witnesseth:

That the said parties of the first part for and in consideration of
328 the sum of twenty-five hundred dollars, lawful money of the United States of America, to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have remised, released, conveyed, and conformed, and by these presents do remise, release, convey, and conform unto the said parties of the second part, and to their heirs and assignees forever the following described premises, to with: Commencing at a point sixteen inches north of the southeast corner of lot 6, in block 69, plot A, Salt Lake City survey, running thence west eight rods, thence north sixteen feet and three inches, thence east eight rods to the west line of East Temple street, thence south sixteen feet and three inches to the place of beginning, together with all and singular the appertenances thereunto belonging or in anywise appertaining.

And also all the estate, right, title, interest, and ownership of said property, possession, and claim, that was of the said Joseph Cain at the time of his decease, to have and to hold the same unto the said parties of the second part, their heirs and assigns, forever. The said sale having been made in pursuance of an order of the probate court for Salt Lake County, made on the sixth day of December, eighteen hundred and sixty-nine.

In witness whereof the said parties of the first part, administrators as aforesaid, hereunto set their hands and seals, the day and year first above written.

SAMUEL W. RICHARDS, [SEAL.]
ELIZABETH CAIN, [SEAL.]
Administrators of the estate of Joseph Cain.

Done in presence of—
ELIAS SMITH and LUCY E. SMITH.

[Internal-revenue stamp, 50 cents, cancelled.]

TERRITORY OF UTAH,
Salt Lake County, ss:

Before me, Elias Smith, judge of probate in and for said county, personally appeared the above-named Samuel W. Richards and Elizabeth Cain, personally known to me, and acknowledged that they, of their own free will and choice, executed the foregoing transfer, this the 10th day of December, eighteen hundred and sixty-nine.

E. SMITH.

The above-named parties of the first part, agree to allow said parties of the second part, the benefit of the wall on the north side of the premises, herewith conveyed, for support of floor and roof, as at present constructed and used, so long as owned by them, and after, subject to negotiations with the successors in ownership.

Also the right to use for road purposes the rod of ground on the wes of the land herewith conveyed.

SAMUEL W. RICHARDS.
ELIZABETH CAIN.

(Endorsed:) Deed. S. W. Richards and Elizabeth Cain, administrators, to Samuel and George Stringfellow. Transfer of part of
329 lot 6, block 69, plot A, of Salt Lake City survey. Recorded deed and transfer book D, page 588, June 3d, 1870. Edwin D. Wooley, recorder Salt Lake County, U. T. Exhibit Stringfellow No. 2.

EXHIBIT STRINGFELLOW NO. 3.

SALT LAKE CITY, *April*, 1870.

Hon. Elias Smith, judge of probate:

We, the undersigned, in pursuance of your order of November 4th, 1869, respectfully report that we have made a sale of the property of the estate of the late Joseph Cain, being part of the homestead, situated on East Temple street, in this city, and described as follows, to wit: Commencing 16 inches north of the southeast corner of lot six (6), block sixty-nine (69), thence running west eight rods, thence north sixteen feet and two inches, thence east eight rods, thence south sixteen feet and three inches to place of beginning; to Samuel and George Stringfellow for the sum of twenty-five hundred dollars, which amount has been applied in payment of debts owing by said estate for improvements, support of the family, etc., including taxes, and interest on money spent in building up said premises.

Our action and doings in the premises are hereby respectfully submitted for your appoval.

ELIZABETH CAIN,
S. W. RICHARDS,
Administrators.

TERRITORY OF UTAH,
County of Salt Lake, ss:

I, D. Bockholt, clerk of the probate court in and for the county of Salt Lake, in the Territory of Utah, do hereby certify that the foregoing is a full, true, and correct copy of a report of the administrators of the estate of Joseph Cain, deceased, made April 18, 1870, as appears of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said court this twenty-second day of November, A. D. 1872.

[L. S.] D. BOCKHOLT,
Probate clerk.

EXHIBIT STRINGFELLOW NO. 4.

Probate court for said county.

In the matter of the estate of Joseph Cain, deceased.

TERRITORY OF UTAH,
Salt Lake County:

Upon reading and filing of the petition of Elizabeth Cain and Samuel W. Richards, administrators of said estate, herein on this day

330 filed, praying for an order of this court authorizing them to sell a portion of said estate, situated on East Temple street, in Salt Lake City, to assist in liquidating obligations now existing of a pressing nature, it is ordered that the said administrators of the estate of the said Joseph Cain, deceased, sell either at public or private sale, as may best subserve the interest of said estate, and the heirs thereto, a part of lot six (6) in block sixty-nine (69) plot A, Salt Lake City, belonging to said estate, to-wit: A piece sixteen feet three inches in width, fronting on East Temple street, Salt Lake City, off the south side of that part of said lot, belonging to said estate, and running thence back eight rods, and to make to the purchaser or purchasers thereof good and sufficient deed or deeds therefor. The money that may be realized from said sale to be applied in payment of the debts of said estate and accounted for in the settlement of their accounts with said estate.

Dated November 4th, 1869.

E. SMITH,
Probate Judge.

TERRITORY OF UTAH,
County of Salt Lake, ss:

I, D. Bockholt, clerk of the probate court, in and for the county of Salt Lake, in the Territory of Utah, do hereby certify that the foregoing is a full, true, and correct copy of an order of said court in the matter of the estate of Joseph Cain, deceased, made on the 4th day of November, 1869, authorizing the sale of real estate, etc., as appears of record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 22d day of November, A. D., 1872.

[L. S.] D. BOCKHOLT,
Probate clerk.

EXHIBIT STRINGFELLOW NO. 5.

Order confirming sale.

Probate court, Hon. Elias Smith, judge.

In the matter of the estate of Joseph Cain, deceased.

TERRITORY OF UTAH,
County of Salt Lake:

On reading and filing the report of the administrator of said estate, this day filed, relative to the sale of a portion of the estate of the said Joseph Cain, deceased, therein described, to Samuel and George Stringfellow, being fully advised in the premises, it is hereby ordered that the said sale be confirmed and approved.

April 18th, 1870.

E. SMITH,
Probate clerk.

The counsel of the heirs of Joseph Cain introduced in evidence the instruments marked "Exhibits B, C, and F."

(Here follows two diagrams marked "Page 330, Exhibit B, & Exhibit No. 1.")

331 EXHIBIT G.

To the Probate Judge of Great Salt Lake County:

SIR: I beg leave to call your attention to a mistake in the appraisement of the property of the estate of the late Willard Richards, which I ask your honor to correct, to wit:

Lot 1, block 76, valued at	$800 00
A portion of lot 6, block 69, valued at	150 00
One ten-acre lot in the big field	20 00
	$970 00

On referring to the recorder's office I discover that the said lots do not belong to the estate, and the ten-acre lot was disposed of prior to the death of D'r Willard Richards.

May 17, 1854.

Respectfully, yours, etc.,

JOSEPH CAIN,
Administrator of the estate of Willard Richards, deceased.

332 EXHIBIT C.

Estate of W. Richards.

			Dr.	Cr.
		To amount transferred from ledger A, page 118	$437 20	
		By " " " " " " 118		$534 38
Nov.	20	To cash to Prest. Young	60 00	
Nov.	20	To cash paid James Cowley on account of house	10 00	
Nov.	20	To cash for coffee, &c., for N. Cottonwood Canyon	5 00	
Dec.	3	To sugar for Sarah, and tea for Aunt Rhoda and J. Shipy	2 50	
Dec.	3	By order from J. M. Homer & Co		18 00
Dec.	3	By sugar, &c., tea for Sarah, Aunt Rhoda, and J. Shipy		2 50
Dec.	3	To 12 brooms, from J. Cain	3 70	
Dec.	9	To order on J. M. Homer & Co., to Rhoda Mary, for nails	15 00	
Dec.	9	To cash to Prest. Young	50 00	
Dec.	9	By order from J. M. Homer & Co		15 00
Dec.	19	By tea kettle, pan, pick, &c., for J. M. Homer & Co		11 00
Dec.	19	To " " " " "	11 00	
Dec.	19	To cash to Prest. Young	50 00	
Dec.	21	To goods from J. M. Homer & Co., carpet-bag for Rhoda	2 75	
Dec.	21	By " " " " "		2 75
Dec.	25	By " " " " Aunt Rhoda, and books for Rhoda, &c		4 50
Dec.	25	To " " " " " "	4 50	
Dec.	27	To cash for school books for Rhoda Ann	50	
Dec.	27	By cash from J. M. Homer & Co		50
1855.				
Jan.	5	To cash for trimmings for Heber John, sugar for Sarah	2 00	
Jan.	6	To " " " " and candles for Aunt Rhoda	1 50	
Jan.	6	To axes for Willard and Joseph, whisky for Aunt Rhoda	6 50	
Jan.	6	To " " " " from J. M. Homer & Co		6 50
Jan.	18	To due bills from J. M. Homer & Co., for Mrs. Shipley		6 00
Jan.	18	To " " " " "	6 00	
Jan.	23	To boots for W. Foreman, trimmings for Heber John, pd. Jacobs	25 40	
Jan.	23	To due bills for above from J. M. Homer & Co		25 40
Jan.	27	Cash from J. Cain, for nails, &c. [mill]	2 60	
Feb.	1	Cash from J. Cain, for tallow, etc	3 75	
Feb.	6	Cash from J. Cain to Sarah, for wool-spinning	1 00	
Feb.	6	To cash from J. Cain, for shoe-thread	1 00	
Feb.	6	To cash paid J. M. Homer & Co., for J. Shipley, Mormon battalion	5 00	
Feb.	6	By recd. from J. M. Homer & Co., for do. do		5 00
Feb.	12	To due bill to Aunt Rhoda, for ginger, etc	5 00	
Feb.	12	By due bill from J. M. Homer & Co		5 00
Feb.	17	To cash from J. Cain, for tallow, nails, etc	5 80	
Feb.	17	By cash for peach trees		1 50
Feb.	17	To 3 spades, $9; 2 shovels, $6	15 00	
Feb.	27	By due bills for 2 shovels from G. Morris		1 50
Feb.	27	To cash from J. Cain to Jerokes	50	
March	2	To cash from J. Cain to lard and tallow	2 80	
March	7	By cash and due bill from J. M. Homer & Co		10 00
March	7	By pepper and tea do. do. do.		4 00
March	7	To pepper and tea and bake-kettle for Farmington	10 00	
March	7	To due bill to family [see day-book]	97 50	
March	22	To cash and due bill to S. Longbottom, for wood	3 00	

Estate of W. Richards—Continued.

1855.		Dr.	Cr.
March 22	By cash and due bill from J. M. Homer & Co		$3 00
March 24	To cash from J. Cain, for beef to Sarah	$0 50	
March 25	To cash from J. Cain, for mattrasses for mill	2 50	
March 31	By cash from S. Longstroth, for lumber		4 80
March 31	By cash and due bill from Pendleton [peach trees]		9 00
March 31	To cash from J. Cain, postage to J. Shipley	25	
March 31	To do. do. to Sarah, for sugar	1 00	
April 9	To do. do. to Aunt Rhoda, for tea	1 00	
April 13	To do. do. to Heber John, for books	50	
April 16	To due bill for do., for bed ticking and sheets	5 00	
April 16	By do. from J. M. Homer & Co		10 00
April 16	To do. to J. J. Kelly, for potatoes	5 00	
April 16	To cash for Book of Mormon to Rhoda	1 25	
April 26	To due bill for tallow	10 00	
May 1	By do. from J. M. Homer & Co		10 00
May 1	To cash from J. Cain, postage, J. Shipley	25	
May 11	To cash for tea, for Aunt Rhoda	75	
May 26	To matches for Farmington [J. M. H. & Co.]	25	
May 26	By cash from A. W. Babbitt, being pay as president of council in 2d session		120 00
May 30	To cash to W. J. Appleby, for making out papers	12 50	
	Amount carried forward		

[333]		Dr.	Cr.
	Amount brought forward		
May 30	To cash to Mrs. Moss, for seed-potatoes	$3 00	
June 5	To cash to seed-potatoes	3 75	
June 6	To cash to seed, lime, grease, etc	5 00	
June 14	To cash to tea for Mrs. Braddock, and for seed-corn	2 50	
June 14	By received from J. M. Homer & Co		2 00
June 14	To indigo, J. M. Homer & Co	2 00	
June 14	Cash for tea for Aunt Rhoda, and sheets for Heber J	2 00	
June 21	To cash for tea for Aunt Rhoda, shirting, etc	3 25	
July 5	To cash to Hackings, and for potatoes from Parry	1 25	
July 7	To cash for postage	50	
Aug. 9	By received from J. M. Homer & Co		2 00
Aug. 9	To 1 pitchfork, J. M. Homer & Co	2 00	
Aug. 18	By received from J. S. Reilly, in scrip		100 00
Aug. 18	To paid Territorial and county tax, G. S. L. County, 1854 and 1855	48 72	
Sept. 5	To cash to Mary, for sacks and nails for mill	8 00	
Sept. 5	" for postage	25	
Oct. 4	" to man for damage of ax	50	
Dec. 15	" to Chas. Taylor, for beef to Mary	55	
1856.			
Jan. 9	To cash from J. M. Homer & Co	48 50	
Jan. 9	To beef from Thomas Duncan	3 00	
Jan. 9	" " " on account of pasture		3 00
Jan. 9	To shoemaking from Haff	10 00	
Jan. 9	By received from pasture, order on Haff		10 00

334 *General family account.*

1854.	City lots, etc	Dr.	Cr.
April 1	To 25 bushels parsnips, @ 60c	$12 50	
April 1	720 pounds pork, @ 20c	144 00	
April 13	ground cherries	4 00	
May 3	asparagus	5 00	
June 9	sage	5 00	
June 15	peas, 20 bushels, at $2	40 00	
Sept. 11	20 lbs. parsnip seed, @ $1	20 00	
Sept. 11	70 lbs. beet seed, @ $1	70 00	
Sept. 11	10 lbs. carrot seed, @ $1	10 00	
Sept. 11	10 lbs. onion seed, @ 1.50	15 00	
Sept. 11	lettuce seed	5 00	
Sept. 11	500 melons, @ 6c	30 00	
Sept. 11	beans and peas	75 00	
Sept. 26	tomatoes and ground cherries	15 00	
Sept. 26	cucumbers	10 00	
Nov. 16	430 cabbages, at 6c	25 00	
Nov. 16	20 bush. onions, at $2	40 00	
Nov. 16	100 bush. carrots, at 50c	50 00	
Nov. 17	290 bush. beets, at 50c	145 00	
Nov. 17	160 bush. potatoes, at 75c	120 00	
Nov. 29	700 lbs. beef	56 00	
'55.			
March 20	80 bush. parsnips, at 50c	40 00	
March 20	peas	20 00	
March 20	hay furnished for 1854 and 1855	275 00	

General family account—Continued.

		Dr.	Cr.
1853.			
March 20	apples	3 00	
	80 pounds wool in 1854, at 50c	40 00	
	765 dozen peaches, at 25c	191 25	
	150 bush. potatoes, at 75c	112 50	
	30 bush. beets, at $1	30 00	
	4 bush. corn, at $1.50	6 00	
	8 bush. corn for 1854 [omitted]	12 00	
	100 melons, at 6c	6 00	
	12 bush. oats, at $1.75	21 00	
	asparagus	5 00	
	1,000 lbs. pork, killed in fall of 1854-5, at 20c	200 00	
	90 cords wood furnished family	900 00	
	milk of 3 cows in 1854, at $10 each	20 00	
	milk of 2 cows for 1855, at $10	30 00	
	flour and meat from John Eddins	25 00	
	rec'd from pasture		
	52 bush. wheat, 1854, at $2	104 00	
	2 bush. barley	4 00	
	13 pigs, at $5	65 00	
	266 lbs. butter, 1854, at 25c	66 50	
	300 lbs. cheese, 1854, at 16c	48 00	
	135 lbs. wool, 1855, at 50c	67 50	
	289 lbs. butter, 1855, at 25c	72 25	
	170 lbs. cheese, 1855, at 16c	27 20	
	12½ doz. eggs, 1855, at 20c	2 50	
	14 poultry, 1855	5 75	
	9 sheep for meat, 1855, at $5	45 00	
	21 bush. corn, at $1	21 00	
	beef from Homer Duncan	3 00	
	3 38-100 bush. wheat, family at Farmington	7 26	
	10 bush. wheat, family at city	20 00	
	3 bush. oats, family at city	4 50	
	3 bush. oats, family at Farmington	4 50	
	27 bush. potatoes, family at city	27 00	
	23 bush. potatoes, family at Farmington	23 00	
	2 bush corn, do. do.	3 00	
	288 squashes, do. do.	14 40	
	7 55-60 bush. wheat, do. do.	15 83	
	544½ bush. wheat, family at city, at $2	1,089 00	
	2½ bush. corn	3 75	
	200 lbs. meal	8 00	
	100 bush. corn, Farmington	140 00	
	151 lbs. flour	9 06	
	1 bush. meal, $1.20; 1 bush. corn, $1.50	2 70	
	20 cords wood, family at Farmington	200 00	
	91 bush. wheat, received from Dr. Bernhisel	182 00	
	12½ bush. oats pd. M. Demming from do., $1.75	21 24	
	1 beef cow	20 00	
[335]		Dr.	Cr.
	3¼ bush. corn	84 87	
	pd. from D. Shearer for Heber John	7 00	
	to pr. shoes from Shearer for Susan	2 75	
	shoemaking for family, pd. Snelgrove for Susan	25 20	
	tailoring for Heber John, pd. Dauger do.	11 15	
	whip-lashes for Shipley	1 75	
	shoemaking for Theodore Johnson	51 70	
	leather from Thos. Wier		
	pd. Mrs. Van Cott for braiding	2 55	
	214 lbs. of salt from M. J. Snediker, at 4c	8 56	
	cash and store orders		
1854.			
June 26	cash for Shipley for tea for Aunt Rhoda	1 50	
July 10	do. do. for Snediker	50	
15	do. do. for tea for family	10 50	
17	cash for family for dye stuffs	23 00	
24	cash to Sarah for shoes for Willard	2	
24	do. to Rhoda for medicines	1	
Aug. 19	do. for tea for Susannah and pepper for family	2	
24	do. for shirt and buttons, Heber John	1 25	
Sept. 2	do. for shoes and carding wool	18 50	
2	do. for Shipley for soap, etc	1 30	
10	do. for shoes for Calvin	1 25	
13	do. for tea for Mrs. Braddock	75	
15	do. for whisky for Rhoda	2	
21	order of J. M. Homer & Co., to Sarah and Nanny	20	
21	do. for Susannah	3	
21	do. Mrs. Braddock and Mrs. Franklin	6	
21	do. Susan	4 50	
21	do. Mary	6 00	
21	do. Rhoda	4 50	
21	do. Aunt Rhoda and Heber John	6	
21	do. J. Shipley	1 50	
29	medicine for Rhoda for Calvin, shoe thread, binding, etc	10 35	

General family account—Continued.

1854.			Dr.	Cr.
Oct.	3	sugar and candles for Rhoda	1 50	
	4	whisky, candles, and matches for Rhoda	2 25	
	4	cash to Sarah for spinning	1	
	19	cash for brandy for Mary	1 50	
	20	cash for bed-cords for Joseph and Mary	2	
	23	cash for candles for mill and wrap for Mary	4 75	
	25	order on J. M. Homer & Co., Susannah	3	
	25	orders and cash, J. M. Homer & Co., Sarah and Mary	16	
	25	do. do. do. do. Susan	3 50	
	25	do. do. do. do. Mary	4 50	
	25	do. do. do. do. Rhoda	3	
	25	do. do. do. do. Aunt Rhoda and Heber	3	
	25	do. do. J. Shipley	5	
Nov.	6	cash for ax for Heber John Richards	2 50	
	6	cash to W. Nixon, difference on stove, Susannah	20	
	11	paid Mrs. Hoag, and for Rhoda, for schooling	4 25	
	20	cash pd. Philip Ranyonton for wood	50	
Dec.	3	cash for sugar for Sarah	1	
	3	cash for tea, Aunt Rhoda and Joseph	1 50	
	3	12 brooms	3 70	
	8	order to Rhoda, pay washing-machine, when child was sick. }	15	
	8	order to Mary when sick, nails, etc., for mill. }		
	19	tea-kettle, pan, 2 bed-cords, and pitch	11	
	21	carpet-bag for Rhoda Ann Richards	2 75	
	25	order, Aunt Rhoda	3	
	25	books for Rhoda Ann and Joseph	1 50	
	27	paid W. Woodruff, book for Rhoda Ann	50	
1855.				
Jan.	5	cash for trimming for Heber John	1	
	5	cash for sugar for Sarah	1	
	6	cash for trimmings for Heber John, candles for Aunt Rhoda	1 50	
	10	2 small axes for Willard and Joseph	2 50	
	10	order to Shipley for whisky for Aunt Rhoda	4	
	18	order to Shipley to pay for attending wife when sick	6	
	23	order to W. Foreman for boots	6 50	
	23	order to Heber John for trimming	1 50	
Feb.	1	cash for tallow, etc	3 75	
	6	cash to Sarah for wool-spinning	1	
	6	cash for shoe-thread for bro. John's party	1	
	6	order, J. Shipley, Mormon battalion	5	
[336]	12	ginger, trimmings, etc., Aunt Rhoda	5 00	
	17	order for pants for W. Foreman	7	
March	7	cash and due bills to Sarah, Rhoda Ann, and children	20	
	7	cash and due bills to Nancy and children	12 50	
	7	cash and due bills to Susan and child	7 50	
	7	do. do. on J. M. H. & Co., for Rhoda and child	7 50	
	7	do. do. on do. do. for Nancy and children	10	
	7	do. do. on do. do. for Susanna	5	
	7	do. do. on do. do. for Aunt Rhoda and H. J	10	
	7	do. do. on do. do. for Joseph Shipley and family	15	
	7	black tea and pepper for Farmington	4	
	7	flour received from Mrs. Thompson, [Lawson for] 12 peach trees for J. Shipley, through the P. O	6	
	20	McGuffey's Second Reader to Alice Ann	40	
	22	cash to S. Longbottom, for wood	1	
	22	due bills, do. do.	2	
	31	25 bush. wheat from J. M. Homer & Co	37 50	
April	6	order to Mrs. Braddock and Mrs. Franklin on store	10	
	12	velveteen and trimmings for J. Shipley	3 57	
	16	cash to Heber John for books	50	
	16	due bill to Aunt Rhoda for bed ticking and sheets for Heber John	5 00	
	19	1 pr. shoes to Rhoda Ann from J. M. H. & Co	1 50	
	25	25 bush. wheat from J. M. H. & Co	37 50	
May	1	due bill on J. M. H. & Co., for tallow	10	
	24	matches for Farmington	25	
June	14	12 oz. Indigo for family	2	
Aug.	9	1 pitchfork for J. Shipley	2	
		to 25 bush. wheat received per J. Shipley from J. M. Homer & Co., May 24, omitted	37 50	
		slate pencil omitted in February, for boy	25	

TERRITORY OF UTAH,
County of Weber, ss:

I, the undersigned, clerk of the probate court, in and for said county, hereby certify that the within and foregoing is a true and correct copy of pages 203, 204, 205, 224, 225, 226, 227, and 228 of the account-book

of Joseph Cain, as administrator of the estate of Willard Richards, deceased.

Given under my hand and the seal of said court, this 21st day of May, A. D. 1873.

[L. S.] T. S. RICHARDS,
Clerk Probate Court.

EXHIBIT F.

In the matter of the estate of Hon. Willard Richards, deceased.

Abstract.

Among the records of the probate court in and for Salt Lake County, and Territory of Utah, to wit, Book B, page 25, and immediately succeeding the record of the appointment of Joseph Cain, esq., administrator of the estate of Hon. Willard Richards, commencing on the 32d line of the above-mentioned page and book, are the following: Also, the same day the court appointed Thomas Rhodes and Joseph Horne, citizens of Great Salt Lake City, appraisers, to value the property belonging to said estate, as far as the same shall come to their knowledge, as the law requires.

May 17, 1854, the appraisement bill was filed in office, of which the following is a summary:

Improvements on lot 1, block 76, Great Salt Lake City	$800 00
Improvements on part of lot 2, Great Salt Lake City	250 00
Improvements on part of lot 7, Great Salt Lake City	1,500 00

337 That the foregoing is all the evidence offered in the case in the probate court or in this court.

That after said matter had been argued in this court by the counsel for the respective parties, it was submitted and taken under advisement in pursuance of the stipulation of the counsel of the respective parties, referred to and set forth in the following written agreement, to wit:

In the district court for the third judicial district in and for Utah Territory, county of Salt Lake.

In the matter of the application of the heirs of Joseph Cain, deceased, Brigham Young, et al., for deeds in fee for the east half of lot 6, block 69, plot A, Salt Lake City survey:

Whereas at the time of the argument of the said matter in the said court before Judge P. H. Emerson, his duties as judge of the third district court were about terminating by reason of his assignment as judge of the first judicial district of said Territory, and there not being time for the said judge to render his opinion thereon before the termination of his duties as judge of said third district, it was agreed by the attorneys of the respective parties herein in open court, that the said matter be taken under advisement by the said judge, and that his decision and findings when rendered be filed with the clerk of the said third district court, and thereafter judgment be rendered therein in said court in accordance with such decision and findings.

And the said Judge Emerson having advised said attorney that he is ready to render his opinion and findings in said matter, and inquiries of them what course he shall pursue with reference to the signing and transmission of the papers to the clerk of said third district court.

It is therefore hereby agreed and stipulated by and between the said attorneys, that said opinion and findings be signed by the said Judge P. H. Emerson, and with the papers in the said matter be transmitted by express to the clerk of the third district court, at Salt Lake City, and there be placed on file.

It is further agreed that judgment be rendered by the said third district court, at the next regular term thereof, in accordance with said decision and findings, and in pursuance of the stipulation aforesaid, provided that the rights of the respective parties to move for a new trial, make statements of the case, take exceptions and appeals, shall in no wise be affected thereby.

BASKIN & DEWOLF,
Attorneys for the heirs of Joseph Cain, Charles Crismon and Elizabeth Cain.
WILLIAMS & YOUNG,
Attorney' for Brigham Young, William Jennings, and heirs of Willard Richards, deceased.
GEO. E. WHITNEY,
Attorney for Stringfellow Brothers.

SALT LAKE CITY, U. T., *September 10th*, 1874.

338 That, by reason of the premises and in pursuance of said stipulations, the papers in the matter, together with said agreement, the decision, findings, and order of judgment, and decree of the judge aforesaid, were forwarded to the clerk of this court, and said agreement, decision, findings, order, judgment, and decree were, on the 12th day of September, 1874, at which date this court was not in session, filed by said clerk.

That said decision, findings, order, judgment, and decree are in words and figures following, to wit:

In the district court for the third judicial district in and for Utah Territory, county of Salt Lake.

In the matter of the several applications of Samuel Stringfellow, George Stringfellow, William Jennings, Elizabeth Cain, Joseph M. Cain, Elizabeth T. Crismon, and Charles Crismon, heirs of Joseph Cain, deceased, and Brigham Young, Nicholas Groesbeck, and the heirs of William Richards, deceased, for deeds from the mayor of Salt Lake City for a part of lot 6, block 69, plot A, Salt Lake City survey.

This case comes before this court on an appeal from the judge of probate of Salt Lake County, and was tried by this court without a jury, and upon the filings and testimony in the probate court. Much of the testimony is mere hearsay, and as such testimony is liable to be very conflicting. As fished out from this great mass of hearsay and conflicting testimony, the following are the main facts as found by the court:

That the tract of land upon which stands the city of Salt Lake was occupied and possessed by numerous persons, while a part of the public unsurveyed domains of the United States.

That under an act of Congress of March 2d, 1867, entitled "An act for the relief of inhabitants of cities and towns upon public lands," and an act of the Territorial legislature, approved February 17, 1869, containing numerous provisions regulating the rights of settlers, and the manner in which their rights shall be ascertained. Under the said act of Congress, the mayor of Salt Lake City obtained a deed from the gen-

eral government for the territory occupied by said city, in trust for those who are rightfully entitled to the same, and these proceedings were commenced in the probate court of Salt Lake County by the several applicants to determine to whom the deed or deeds should be given by the mayor for a portion of lot 6, block 69, plot A, of the Salt Lake City survey, said lot being a portion of the original survey of said city.

That upon the original settlement and occupancy of the city, certain persons assumed the right to distribute and assign to others lots and blocks in the city, which right seems to have been acquiesced in by the inhabitants; that among those who assumed this right was one
339 Willard Richards, now deceased; and that said lot 6, block 69, was a part of the tract of land which he claimed, and exercised the assumed right to thus assign and allot.

That the request of said Willard Richards, and under a promise to give him a lot to build upon, one Joseph Cain, now deceased, moved on to the east half of said lot, and that the house into which he first moved was situated upon the north half of the east half of said lot; that he soon after built a house upon the south half of the east half of said lot, into which he moved with his family, and where he and they resided at the time of his death in 1854; and that his family continued to reside there for some considerable time after his death.

The evidence in relation to the extent of the occupancy of Joseph Cain, after he moved into what is termed in the testimony his "new house," on the south half, is very conflicting. From the whole testimony, however, the court finds this to be the fact: That he occupied the south half of the east half of said lot 6, as far west and back to a line fourteen (14) feet east of the west line of the east half of said lot 6.

That if the said Joseph Cain ever occupied or claimed the right of possession of any portion of the north half of the east half of said lot, after he moved into the new house, his heirs and representatives, soon after his decease, surrendered and gave up such possession, and are not now, and have never since that time been, in possession of any portion of said north half; that the heirs and representatives of Joseph Cain, deceased, are in possession and entitled to the possession of that portion of the south half of the east half of lot 6, block 69, plot A, Salt Lake City survey, hereinafter particularly described in the judgment and decree of the court in relation to the certificate to be issued to them; that the balance of said south half, formerly in their possession, has been sold, and the possession delivered to the persons named in said judgment and decree of the court with the particular description each is now in possession of and entitled to.

That the north half of the east half of said lot has been subdivided, and that the occupancy, possession, and right of possession has been in various persons, and that the persons hereinafter named in the judgment and decree of the court are in possession, and entitled to the possession of the several particular descriptions of land given in connection with their names.

That the heirs of Willard Richards, deceased, are not now in possession, or entitled to the possession, of any fraction of said lot 6, claimed or filed on by them.

Wherefore, by reason of the law and the findings aforesaid, it is ordered, adjudged, and decreed that it be certified to the mayor of Salt Lake City as follows, viz:

1st. That Nicholas Groesbeck is entitled to a deed for the fol-
340 lowing described piece or parcel of land, being a part of lot 6, block 69, plot A, of the Salt Lake City survey, described and

bounded as follows, viz: Commencing at the southeast corner of the east half of said lot, and running thence west nine (9) rods; thence north sixteen (16) inches; thence east nine rods; thence south sixteen (16) inches to the place of beginning.

2d. That Samuel Stringfellow and George Stringfellow are entitled to a deed for the following described piece or parcel of land, being a part of lot 6, block 69, plot A, of the Salt Lake City Survey, described and bounded as follows, viz: Commencing at a point on the east line of said lot sixteen (16) inches north from the southeast corner of said lot, and running thence west one hundred and thirty-two (132) feet; thence north sixteen (16) feet and three (3) inches; thence east one hundred and thirty-two (132) feet; thence south sixteen (16) feet and three (3) inches to the place of beginning. Together with a right of way over and across a strip of land one (1) rod in width, in the rear and adjoining the above described premises.

3d. That Elizabeth Cain, Joseph M. Cain, Elizabeth T. Crismon, and Charles Chrismon, heirs of Joseph Cain, deceased, are entitled to a deed for the following described piece or parcel of land, being a part of lot 6, block 69, plot A, of the Salt Lake City survey, described and bounded as follows, viz: Commencing at a point on the east line of said lot seventeen (17) feet and seven (7) inches north from the southeast corner of said lot, and running thence west one hundred and thirty-two (132) feet; thence south sixteen (16) feet and three (3) inches; thence west one (1) rod; thence south sixteen (16) inches; thence west two (2) feet and six (6) inches; thence north eighty-two (82) feet and six (6) inches; thence east nineteen (19) feet; thence south twenty-five (25) feet; thence east one hundred and thirty-two (132) feet; thence south thirty-nine (39) feet and eleven (11) inches to the place of beginning, subject, however, to a right of way over a strip of land, one (1) rod in width on the west and in the rear of the premises heretofore deeded to Samuel and George Stringfellow.

4th. William Jennings is entitled to a deed for the following described pieces or parcels of land, being portions of lot 6, block 69, plot A, of the Salt Lake City Survey, described and bounded as follows, viz: Commencing at a point on the east line of said lot, fifty-seven (57) feet and six (6) inches from the southeast corner thereof, and running thence west one hundred and thirty-two (132) feet; thence north twenty-five (25) feet; thence east one hundred and thirty-two (132) feet; thence south twenty-five (25) feet to the place of beginning.

Also commencing at the northeast corner of said lot and running thence west one hundred and thirty-five (135) feet; thence south forty
(40) feet and four (4) inches; thence east one hundred and thirty-
341 five (135) feet; thence north forty (40) feet and four (4) inches to the place of beginning; and also commencing on the north line of said lot at a point one hundred and thirty-five (135) feet west from the northeast corner thereof, and running thence south eighty-two (82) feet six (6) inches; thence west sixteen (16) feet; thence south eighty-two (82) feet and six (6) inches; thence west forty (40) feet; thence north ten (10) rods; thence east fifty-six (56) feet to the place of beginning.

5th. That Brigham Young, sen., is entitled to a deed for the following described pieces or parcels of land, being a part of lot 6, block 69, plot A, of the Salt Lake City survey, described and bounded as follows, viz: Commencing at a point on the east line of said lot, eighty-two (82) feet and six (6) inches north from the southeast corner thereof, and running thence west one hundred and thirty-five (135) feet; thence north fourteen (14) feet and two (2) inches; thence east one hundred and thirty-

five (135) feet; thence south fourteen (14) feet and two (2) inches to the place of beginning; and also commencing at a point on the east line of said lot, ninety-six (96) feet and eight (8) inches from the southeast corner thereof, and running thence west one hundred and thirty-five (135) feet; thence north twenty-eight (28) feet; thence east one hundred and thirty-five (135) feet; thence south twenty-eight (28) feet to the place of beginning.

Dated September 11, 1874.

PHILIP H. EMERSON, *Judge.*

That on the 21st day of September, 1874, the parties moving for a new trial filed in this court the following notice of motion for a new trial, and served the same on the other parties to said matter, to wit:

TERRITORY OF UTAH,
Salt Lake County, ss:

In the district court in and for the third judicial district.

In the matter of the several applications of Samuel Stringfellow, George Stringfellow, William Jennings, and Elizabeth Cain, Joseph M. Cain, Elizabeth T. Crismon, and Charles Crismon, heirs of Joseph Cain, deceased, and Brigham Young, Nicholas Groesbeck, and the heirs of William Richards, deceased, for deeds from the mayor of Salt Lake City for a part of lot 6, in block 69, plot A, of Salt Lake City survey.

Take notice that the said Elizabeth Cain, Joseph M. Cain, Cha's Crismon, and Elizabeth Crismon, his wife, on the first day of the next regular term of said court to be holden on the fifth day of October next, at the federal court-room in Salt Lake City, will in open court at the hour of eleven o'clock a. m. of said day, or as soon thereafter as counsel can be heard, move said court for a new trial in the above matter.

342 Said motion will be made and based on the following grounds and assignment of errors, to wit:

1st. The insufficiency of the evidence to justify the findings of the judge.

2d. That said findings are against both the law and the evidence.

3d. That the portions of the order, judgment, and decree rendered by the judge and specified therein as 1st, 2d, 4th, and 5th, are not warranted by the findings, and are against both the law and the evidence.

Salt Lake City, September 21st, 1874.

BASKIN & DEWOLFE,
Attorneys for Elizabeth Cain, Joseph M. Cain, Charles Crismon, and Elizabeth Crismon, his wife.

To Samuel Stringfellow, George Stringfellow, William Jennings, Brigham Young, Nicholas Groesbeck, and heirs of Willard Richards, deceased.

The following orders were made in said matter upon the following affidavit:

TERRITORY OF UTAH,
County of Salt Lake, ss:

R. N. Baskin, being first duly sworn, upon his oath deposes and saith that he is one of the attorneys of record of Joseph M. Cain, Elizabeth Cain, Charles Crismon, and Elizabeth T. Crismon, in the motion of the

several applications of Samuel Stringfellow, George Stringfellow, William Jennings, and Elizabeth Cain, Joseph M. Cain, Elizabeth T. Crismon, and Charles Crismon, heirs of Joseph Cain, deceased, and Brigham Young, Nicholas Groesbeck, and the heirs of Willard Richards, deceased, for deeds from the mayor of Salt Lake City for a part of lot 6, block 69, plat A, of Salt Lake City survey, now pending in the third district court of said Territory; that the portions above named, for whom affiant is acting as one of the attorneys in said motion, on the 21st day of September, gave the other parties in said motion a notice of motion for a new trial in said motion, the grounds of said motion, as specified in said notice, being:

1st. Insufficiency of the evidence to justify the findings of the judge.

2d. That said findings are against both the law and the evidence.

3d. That the portions of the order, judgment, and decree rendered by the judge and specified therein as first, second, fourth, and fifth are not warranted by the findings, and are against both the law and the evidence; that in the statements on the motion for a new trial it is necessary to set out all of the evidence in the case; that the evidence is very voluminous, amounting to over five hundred pages of legal cap; that, in addition to the original statement, three copies are required to
343 be made out and served on the other parties in said motion; that the five days given by the 195th section of the practice act in which to make the statements, after service of a notice for a new trial, is not sufficient time for the making out of the same; that it will reasonably require thirty days from this date to prepare, file, and serve said statement.

R. N. BASKIN.

Subscribed and sworn to before me this 24th day of September, 1874.

JOSEPH F. NOUNNAN,
Clerk Third District Court, Utah Territory.

Upon reading the foregoing affidavit, it is ordered that the said Elizabeth Cain and Joseph Crismon have thirty days from this date in which to prepare and file their statement in the notice aforesaid.

JA'S B. McKEAN,
Judge of the Third District Court of Utah Territory.

SEPTEMBER 24TH, 1874.

Upon reading the foregoing affidavit, it is ordered that the said Elizabeth Cain, Joseph M. Cain, Elizabeth Crismon, and Charles Crismon have thirty days from the 24th of September, 1874, in which to prepare and file their statement in the motion aforesaid.

Dated Sept. 25th, 1874.

PHILIP H. EMERSON, *Judge.*

Errors.

The following are the errors committed in the proceedings, and complained of by the parties moving for a new trial:

First. The evidence is insufficient to justify the findings in this:

1st. There is no evidence showing or tending to show that either the heirs or representatives of Joseph Cain, deceased, ever surrendered or gave up the possession of any portion of the north half of the east half of lot 6, block 69, plot A, of Salt Lake City survey.

2d. There is no evidence showing or tending to show that any valid

sale was ever made of any portion of the south half of the east half of said lot, except the interest of the said Elizabeth Cain in the piece first described in the award to William Jennings.

3d. There is no evidence establishing or tending to show that Samuel Stringfellow, George Stringfellow, Brigham Young, and Nicholas Groesbeck, or either of them, are entitled to any portion of said east half of said lot, or that either of them are entitled to the possession of any portion thereof.

4th. There is no evidence showing or tending to show that William Jennings is entitled to any portion of said east of half said lot, or that he is entitled to the possession thereof, except the interest therein which the said Elizabeth Cain, by deed of quitclaim, conveyed to Charles King, and which the said Jennings holds by a chain of quitclaim
344 conveyances from the said Elizabeth Cain through the said Charles King to him.

5th. There is no evidence showing or tending to show that either Brigham Young, William Jennings, or Nicholas Groesbeck, on the 2d day of March, 1866, the date of the said act of Congress, or at the date of the entry of said city by the mayor, and subsequently was in possession of any portion of the east half of said lot.

Second. That said findings are against both the law and evidence, in this:

The evidence establishes,

1st. That Joseph Cain, deceased, at the time of his death, on the 20th day of April, 1857, owned, possessed, and with his family resided upon the east half of lot 6, block 69, plot A, Salt Lake City survey, as his homestead.

2d. That he left a widow, the said Elizabeth Cain, and two minor children, the said Joseph M. Cain, who was then over six years old, and Elizabeth T. Cain, who was then nine years old, and is now the wife of the said Charles Crismon.

3d. That said widow and children are inhabitants of Salt Lake City, and have so been for more than twenty years last past.

4th. That after the death of the said Joseph Cain his widow and children continued to occupy the dwelling house on said half lot as a homestead for more than four years, after which time, up to the time of the trial, they possessed and occupied the same as store-rooms.

5th. The evidence shows that no sale or conveyance of any portion of said east half of said lot has ever been made by the children of Joseph Cain, deceased, or either of them.

6th. That William Jennings claims the piece of said east half of said lot first described in the award to him under a claim of quitclaim conveyances derived from the said Elizabeb Cain.

7th. That Samuel and George Stringfellow claim the portion of said east half of said lot awarded to them by virtue of a deed of the administrators of the estate of Joseph Cain, deceased, based upon certain proceedings in the probate court of Salt Lake County, which proceedings and deed are upon their face void.

8th. The evidence is silent in relation to Nicholas Groesbeck's claim.

9th. The evidence further shows that Brigham Young was not in possession, and had no right or claim to the portion of said lot awarded to him.

10th. That, under the law arising from the facts proven, the widow and children of Joseph Cain are the lawful owners, and entitled to the possession and a conveyance by the mayor of the east half of said lot,

except the interest conveyed by said widow to Charles King and
345 now lawfully owned by William Jennings.

Third. The portions of the order, judgment, and decree rendered by the judge, and specified therein as first, second, fourth, and fifth, are not warranted by the findings, and are against the law and the evidence.

Because all of the facts necessary, by law, to support said portions of said order, judgment, and decree are not found, that is to say:

1st. It is not found that Brigham Young, William Jennings, Samuel Stringfellow, George Stringfellow, and Nicholas Groesbeck, or either of them, are or ever have been inhabitants of Salt Lake City or of Utah Territory.

2d. It is not found that, at the date of the passage of said law of Congress, or at the date of the entry of Salt Lake City by the mayor, or at the date of the respective statements of the parties in said matter, either Brigham Young, William Jennings, George Stringfellow, Samuel Stringfellow, or Nicholas Groesbeck owned, possessed, or was entitled to the possession of any portion of said lot.

Fifth. Said portions of said judgment, order, and decree are against the law and the evidence for the reasons hereinbefore set forth.

BASKIN & DEWOLFE,
Attorneys for Elizabeth Cain, Joseph M. Cain, Elizabeth T. Crismon, and Charles Crismon.

In the 3d district court Utah Territory.

In the matter of the several applications of Samuel Stringfellow, George Stringfellow, William Jennings, Elizabeth Cain, Joseph M. Cain, Elizabeth T. Crismon, Charles Crismon, Brigham Young, Nicholas Groesbeck, and the heirs of Willard Richards, deceased, for deeds from the mayor of Salt Lake City for a part of lot 6, block 69, plat A, Salt Lake City survey:

Now comes the said Elizabeth Cain, Joseph M. Cain, Charles Crismon, and Elizabeth T. Crismon, by their attorneys, and move for a new trial in said matter on the following grounds, to wit:

1st. Insufficiency of the evidence to justify the findings of the judge.

2d. That said findings are against both the law and the evidence.

3d. That the portion of the order, judgement, and decree rendered by the judge, and specified therein as 1st, 2nd, 4th, and 5th, are not by the findings, and are against both the law and the law and evidence.

BASKIN & DEWOLFE,
Attorneys for Elizabeth Cain, Joseph M. Cain, Elizabeth T. Crismon, Charles Crismon.

(Endorsed:) Motion for new trial. Fled Nov. 28th, 1874. E'w'd B. McKean, clerk.

346 In the 3d district court of Utah Territory.

In the matter of the several applications of Samuel Stringfellow, George Stringfellow, William Jennings, Elizabeth Cain, Joseph M. Cain, Elizabeth T. Crismon and Charles Crismon, Brigham Young, Nicholas Groesbeck, and the heirs of Willard Richards, deceased, for deeds from the mayor of Salt Lake City, for a part of lot 6, block 69, plat A, Salt Lake City survey.

The motion aforesaid on this day came on to be further heard, on the motion for a new trial in said matter, on this day in open court, made

by the said Elizabeth Cain, Joseph M. Cain, Elizabeth T. Crismon and Charles Crismon, and the said motion having been submitted to the court by the attorneys of the respective parties, and it appearing to the court that said motion was heretofore tried before P. H. Emerson while acting judge of this court; and that at the time of the argument of the said matter in the said court before the said P. H. Emerson, his duties as judge of the 3d district court were about terminating by reason of his assignment as judge of the first judicial district of said Territory, and there not being time for said judge to render his opinion therein before the termination of his duties as judge of said third district, it was agreed by the attorneys of the respective parties herein in open court that the said matter be taken under advisement by the said judge, and that his decision and findings when rendered be filed with the clerk of the said third district court; and thereafter judgement be rendered therein in said court, in accordance with such decision and findings, saving to each of the parties the right to move for
347 a new trial, make statements of the case, take exceptions and appeals in said matter; and it further appearing to the court that the said P. H. Emerson in pursuance of said stipulation, on the 11th day of September, 1874, rendered his decision and findings in said matter, which was filed with the clerk of this court on the 12th of September, A. D. 1874, and is in words and figures following, to wit:

In the district court for the third judicial district in and for Utah Territory, county of Salt Lake.

In the matter of the several applications of Samuel Stringfellow, George Stringfellow, William Jennings, Elizabeth Cain, Joseph M. Cain, Elizabeth T. Crismon and Charles Crismon, heirs of Joseph Cain, deceased, and Brigham Young, Nicholas Groesbeck, and the heirs of Willard Richards, deceased, for deeds from the mayor of Salt Lake City for a part of lot 6, block 69, plot A, Salt Lake City survey.

This case comes before this court on an appeal from the judge of probate of Salt Lake County, and was tried by this court without a jury and upon filings and testimony in the probate court. Most of the testimony is mere hearsay, and as such, testimony is liable to be very conflicting. As picked out from this great mass of hearsay and conflicting testimony, the following are the main facts as found by the court.

That the tract of land upon which now stands the city of Salt Lake was occupied and possessed by numerous persons while a part of the public unsurveyed domains of the United States.

348 That under an act of Congress of March 2d, 1867, entitled "An act for the relief of inhabitants of cities and towns upon public lands," and an act of the Territorial legislature the rights of settlers and the manner in which their rights shall be ascertained under said act of Congress, the mayor of said Salt Lake City obtained a deed from the general government for the territory occupied by said city, in trust for those who are rightfully entitled to the same, and these proceedings were commenced in the probate court of Salt Lake County by the several applicants to determine to whom the deed or deeds should be given by the mayor for a portion of lot 6, block 69, plat A, of the Salt Lake City survey, said lot being a portion of the original survey of said city.

That upon the original settlement and occupancy of the city, certain persons assumed the right to distribute and assign to others, lots and blocks in the city, which seems to have been acquiesced in by the inhabi-

tants. That among those who assumed this right was one Willard Richards, now deceased, and that said lot 6, block 69, was a part of the tract of land which he claimed and exercised the assumed right to thus assign and allot.

That the request of said Willard Richards, and under a promise to give him a lot to build upon, one Joseph Cain, now deceased, moved on to the east half of said lot, and that the house into which he first moved was situated upon the north half of the east half of said lot, that he soon after built a house upon the south half of the east half of said lot, into which he moved with his family, and where he and they resided at the time of his death in 1854, and that his family continued
349 to reside there for some considerable time after his death.

The evidence in relation to the extent of the occupancy of Joseph Cain, after he moved into what is termed in the testimony his "new house" on the south half is very conflicting. From the whole testimony, however, the court finds this to be the fact, that he occupied the south half of the east half of said lot 6 as far west and back to a line fourteen (14) feet east of the west line of the east half of said lot 6.

That if the said Joseph Cain ever occupied or claimed the right of possession of any portion of the north half of the east half of said lot, after he moved into the new house, his heirs and representatives soon after his decease, surrendered and gave up such possession, and are not, and have never since that time, been in possession of any portion of said north half.

That the heirs and representatives of Joseph Cain, deceased, are in possession and entitled to the possession of that portion of the south half of the east half of lot 6, block 69, plot A, Salt Lake City survey, hereinafter particularly described, in the judgement and decree of the court in relation to the certificate to be issued to them; that the balance of said south half formerly in their possession, has been sold, and the possession delivered to the persons named in said judgment and decree of the court, with the particular description each is now in possession of and entitled to.

That the north half of the east half of said lot has been subdivided, and that the occupancy, possession, and right of possession has been in various persons, and that the persons hereinafter named in the judgment and decree of this court are in possession, and entitled to the pos-
350 session of the several particular descriptions of land given in connection with their names.

That the heirs of Willard Richards, deceased, are not now in possession or entitled to the possession of any portions of said lot 6, claimed or filed on by them.

Wherefore, by reason of the law and the findings aforesaid, it is ordered, adjudged, and decreed, that it be certified to the mayor of Salt Lake City as follows, to wit:

1st. That Nicholas Groesbeck is entitled to a deed for the following described piece or parcel of land, being a part of lot 6, block 69, plot "A," of the Salt Lake City survey, described and bounded as follows, viz: Commencing at the southeast corner of the east half of said lot, and running thence west nine (9) rods, thence north sixteen (16) inches, thence east nine (9) rods, thence south sixteen (16) inches to the place of beginning.

2d. That George Stringfellow and Samuel Stringfellow are entitled to a deed for the following described piece or parcel of land, being a part of lot 6, block 69, plat A, of the Salt Lake City survey, described and bounded as follows, viz: Commencing at a point on the east line of said

lot sixteen (16) inches north from the southeast corner of said lot and running thence west one hundred and thirty-two (132) feet, thence north sixteen (16) feet & three (3) inches, thence east one hundred and thirty-two (132) feet, thence south sixteen (16) feet and three (3) inches to the place of beginning, together with a right of way over and across a strip of land one (1) rod in width in the rear and adjoining the above described premises.

3d. That Elizabeth Cain, Joseph M. Cain, Elizabeth T. Crismon, and Charles Crismon, heirs of Joseph Cain, deceased, are entitled to
351 a deed for the following described piece or parcel of land, being a part of lot 6, block 69, plot A, of the Salt Lake City survey, described and bounded as follows, to wit: Commencing at a point on the east line of said lot seventeen (17) feet and seven (7) inches north from the southeast corner of said lot and running thence west one hundred and thirty-two (132) feet, thence south sixteen (16) feet and three (3) inches, thence west one (1) rod, thence south sixteen (16) inches, thence west two (2) feet and six (6) inches, thence north eighty-two (82) feet and six (6) inches, thence east nineteen (19) feet, thence south twenty-five (25) feet, thence east one hundred and thirty-two (132) feet, thence south thirty-nine (39) feet and eleven (11) inches to the place of beginning, subject, however, to a right of way over a strip of land one (1) rod in width on the west and in the rear of the premises heretofore deeded to Samuel and George Stringfellow.

4th. William Jennings is entitled to a deed of the following described pieces or parcels of land, being portion of lot 6, block 69, plot A of the Salt Lake City survey, described and bounded as follows, viz: Commencing at a point on the east line of said lot fifty-seven (57) feet and six (6) inches from the southeast corner thereof and running thence west one hundred and thirty-two (132) feet, thence north twenty-five (25) feet, thence east one hundred and thirty-two (132) feet, thence south twenty-five (25) feet to the place of beginning.

Also commencing at the northeast corner of said lot and running thence west one hundred and thirty-five (135) feet, thence south forty (40)
352 feet and four (4) inches, thence east one hundred and thirty-five (135) feet, thence north forty (40) feet and four inches, to the place of beginning; and also commencing on the north line of said lot at a point one hundred and thity-five (135) feet west from the northeast corner thereof and running thence south eighty-two (82) feet and six (6) inches, thence west sixteen (16) feet, thence south eighty-two (82) feet and six (6) inches, thence west forty (40) feet, thence north ten (10) rods, thence east fifty-six (56) feet to the place of beginning.

5th. That Brigham Young, sr., is entitled to a deed for the following described pieces or parcels of land, being a part of lot 6, block 69, plot A of the Salt Lake City survey, described and bounded as follows, viz: Commencing at a point on the east line of said lot eighty-two (82) feet and six i6) inches north from the southeast corner thereof and running thence west one hundred and thirty-five (135) feet, thence north fourteen (14) feet and two (2) inches, thence east one hundred and thirty-five (135) feet, thence south fourteen (14) feet and two (2) inches to the place of beginning; and also commencing at a point on the east line of said lot ninety-six (96) feet and eight (8) inches from the southeast corner thereof, and running thence west one hundred and thirty-five (135) feet, thence north twenty-eight (28) feet, thence east one hundred and thirty-five (135) feet, thence south twenty-eight (28) feet to the place of beginning.

Dated September 11, 1874.

PHILLIP H. EMERSON, *Judge.*

In consideration of the premises it is therefore ordered and adjudged that the said motion for a new trial be, and the same is hereby, overruled pro forma; and it is further ordered, adjudged, and decreed that
353 it be certified to the mayor of Salt Lake City, as specified in *in* the foregoing decision of the said P. H. Emerson; to which order, judgment, and decree the said Elizabeth Cain, Joseph M. Cain, Eliza, beth T. Crismon, and Charles Crismon then and there, by their attorneys, excepted on the grounds specified in their motion for a new trial.

Agreement of counsel.

In the 3d district court of Utah Territory.

In the matter of the several applications of Samuel Stringfellow. George Stringfellow, William Jennings, Elizabeth Cain, Joseph M. Cain, Elizabeth T. Crismon, and Charles Crismon, Brigham Young, Nicholas Groesbeck, & the heirs of Willard Richards for deeds from the mayor of Salt Lake City for a part of lot 6, block sixty-nine (69), plat A, Salt *Salt* Lake City survey.

It is hereby agreed that the statement on the motion for a new trial in said matter shall also be used and stand as the statement on the appeal from the judgement in said matter.
November 29, 1874.

BASKIN & DE WOLFE,
Attorneys for Elizabeth Cain, Joseph M. Cain, Elizabeth T. Crismon, and Charles Crismon.
WILLIAMS & YOUNG,
Att'ys for Brigham Young and the Heirs of Willard Richards, Deceased.
GEO. E. WHITNEY,
Att'y for Samuel and George Stringfellow.

(Endorsed:) In the matter of the several applications of Samuel Stringfellow et al. for deeds of a portion of lot 6, block 69, plat A, Salt Lake City survey. Stipulation. Filed Nov. 28, 1874. E'w'd B. McKean, clerk.

Notice of appeal to the Supreme Court.

Third district court of Utah Territory.

In the matter of the several applications of Samuel Stringfellow,
354 George Stringfellow, W'm Jennings, Joseph M. Cain, Elizabeth Cain, Charles Chrismon and Elizabeth T. Crismon, his wife, Brigham Young, Nicholas Groesbeck, and the heirs of Willard Richards, deceased, for deeds from the mayor of Salt Lake City for part of lot 6, block 69, plat A, Salt Lake City survey.

Take notice that the above named applicants, Joseph M Cain, Elizabeth Cain, Charles Crismon, & Elizabeth T. Crismon, his wife, hereby appeal to the supreme court of Utah Territory from the judgment, order, and decree herein made and entered in said district court on the 28th day of November, A. D. 1874. This appeal is taken from the whole of said judgment, order, and decree, and from the order of court over-

ruling the motion for a new trial made herein. The appeal is taken both on questions of law and fact.

Salt Lake City, December 26, 1874.

BASKIN & DE WOLFE,
Att'ys for said Applicants.

To the clerk of the 3d district court and to Samuel Stringfellow, George Stringfellow, William Jennings, Brigham Young, Nicholas Groesbeck, and the heirs of Willard Richards, deceased.

Copy of the above notice served on us December 26, 1874.

WILLIAMS & YOUNG,
Att'ys for William Jennings, Brigham Young, and the Heirs of Willard Richards, dec'd.
BENNETT & WHITNEY,
Att'ys for S. & G. Stringfellow, N. Groesbeck.

(Endorsed:) In the matter of the application of Samuel Stringfellow et al. for a mayor's deed for parts of lot 6, block 69, plat A, Salt Lake City survey. Notice of appeal. Filed Dec. 26, 1874. E'w'd B. McKean, clerk.

355 *Undertaking on appeal.*

Third district court of Utah Territory.

In the matter of the several applications of Samuel Stringfellow, George Stringfellow, William Jennings, Joseph M. Cain, Elizabeth Cain, Charles Crismon & Elizabeth T. Crismon, his wife, Brigham Young, Nicholas Groesbeck, and the heirs of Willard Richards, deceased, for a deed from the mayor of Salt Lake City for a part of lot 6, block 69, plat A, Salt Lake City survey.

Whereas Joseph M. Cain, Elizabeth Cain, Charles Crismon, and Elizabeth T. Crismon, his wife, of the above-named applicants for a mayor's deed for part of lot 6, block 69, plat A, Salt Lake City survey, are about to appeal to the supreme court of Utah Territory from the judgement therein rendered in the third district court on the 28th day of November, A. D. 1874: Now in consideration of the premises and of said appeal, we, the undersigned residents of the county of Salt Lake and Territory of Utah, do hereby jointly and severally undertake and promise, on the part of the above-named applicants, that the said applicants will pay all damages and costs which may be awarded against them on the appeal.

In witness whereof we do hereto sign our names at *at* Salt Lake City, Utah Territory, on the 26 day of December, A. D. 1874.

CHARLES CRISMON, SR.
JAMES GORDON.

Subscribed and sworn to before me this 26 day of December, A. D. 1874.

[SEAL.] W'M P. APPLEBY,
Notary Public.

(Endorsed:) In the matter of the application of Samuel Stringfellow et al. for deeds from the mayor of Salt Lake City for parts of lot 6, block 69, Salt Lake City. Undertaking on appeal. Filed Dec. 26, 1874. E'w'd B. McKean, clerk, by Willis P. McBride, dep'ty clerk.

356 TERRITORY OF UTAH,
County of Salt Lake, ss:

I, Edward B. McKean, clerk of the third judicial district court of Utah Territory, do hereby certify that the foregoing is a full, true, and correct copy of the original notice of appeal, the statement on motion for a new trial and appeal, the judgments, orders, and decrees of the probate and 3d district court of Utah Territory, and all of the papers used on the hearing of the case in said district court, and all orders, papers, and proceedings, as they appear of record, on file in my office in the matters aforesaid.

Witness my hand and the seal of said court at Salt Lake City this 9th day of January, A. D. 1875.

[SEAL.] E'W'D B. McKEAN, *Clerk.*

In the supreme court.

TERRITORY OF UTAH,
County of Salt Lake, ss:

Be it remembered at a term of the supreme court in and for the Territory of Utah, began and held at Salt Lake City, in the county of Salt Lake in said Territory, on the 11th day of January, A. D. 1875—

Present and presiding, Hon. James B. McKean, chief justice; Hon. P. H. Emerson, associate justice; Hon. Jacob S. Boreman, associate justice—

Among the records and proceedings of said court were the following, to wit:

357 In the supreme court for the Territory of Utah.

WEDNESDAY, *January 13th*, 1875.

Court met pursuant to adjournment at 10 o'clock a. m. Duly opened by proclamation.

JOSEPH M. CAIN ET AL., APPELLANTS,
vs.
BRIGHAM YOUNG ET AL., RESPONDENTS.

Appeal from third district court.

R. N. Baskin, esq., of counsel for appellant, delivered argument. P. L. Williams, esq., counsel for respondents, commenced his argument. Pending the argument, court adjourned till to-morrow at 10 o'clock a. m.

THURSDAY, *January 14th*, 1875.

The supreme court for the Territory of Utah met pursuant to adjournment at 10 a. m. Was duly opened by proclamation.

JOSEPH CAIN ET AL., APPELLANTS,
vs.
BRIGHAM YOUNG ET AL., RESPONDENTS.

This cause having been fully argued by R. N. Baskin, esq., for appellants, and by P. L. Williams, esq., and C. W. Bennett, esq., for respondents, was submitted and taken under advisement by the court.

357½ At a term of the supreme court in and for the Territory of Utah, began and held at Salt Lake City, in the county of Salt Lake in said Territory, on the 7th day of June, A. D. 1875—

Present and presiding, Hon. D. P. Lowe, chief justice; Hon. Phillip H. Emerson, associate justice; Hon. Jacob S. Boreman, associate justice—

Among the records and proceedings of said court were the following, to wit:

MONDAY, *June 7th*, 1875.

The supreme court of the Territory of Utah met this day at one o'clock p. m., pursuant to proclamation of the governor of Utah Territory.

Court duly opened by proclamation.

In the matter of the application of Joseph M. Cain et al. for deeds to portions of lot 6, in block 69, plat A, Salt Lake City.

Appeal from 3d district court.

R. N. Baskin, esq., of counsel for appellants, moved that this cause be placed on the calendar for a reargument. Respondents counsel consenting, it was so ordered by the court.

JUNE 18TH, 1875.

In the matter of the application of Joseph M. Cain and others, appellants, for deeds to parts of lot 6, block 69, plat A, in Salt Lake City.

Appeal from 3d district court.

This cause having been fully argued by R. N. Baskin, esq., for appellants, and P. L. Williams, esq., for respondents, was submitted and taken under advisement by the court. G. E. Whitney, esq., also appeared for respondents.

358 At a term of the supreme court in and for the Territory of Utah, began and held at Salt Lake City, in the county of Salt Lake in said Territory, on the 10th day of January, A. D. 1876—

Present and presiding, Hon. Alexander White, chief justice; Hon. Jacob S. Boreman, associate justice; Hon. Phillip H. Emerson, associate justice—

Among the records and proceedings of said court were the following, to wit:

MONDAY, *January 17th*, 1876.

The supreme court in and for the Territory of Utah met this day pursuant to adjournment at the hour of 10 o'clock a. m.

The court was duly opened.

JOSEPH M. CAIN ET AL., APPELLANTS,
vs.
BRIGHAM YOUNG ET AL., RESPONDENTS.

Appeal from 3d district court.

This cause was ordered by the court to be placed on the calendar of the June term, 1876, of this court for rehearing.

359 And at a term of the supreme court in and for the Territory of Utah, began and held at Salt Lake City, in the county of Salt Lake, in said Territory, on the 5th day of June, A. D. 1876—

Present and presiding, Hon. Michael Schaeffer, chief justice; Hon. Phillip H. Emerson, associate justice; Hon. Jacob S. Boreman, associate justice—

Among the records and proceedings of said court were the following, to wit:

WEDNESDAY, *June 14th*, 1876.

JOSEPH M. CAIN ET AL., APPELLANTS,
vs.
BRIGHAM YOUNG ET AL., RESPONDENTS. } Reargument.

An appeal from the 3d dist. court.

This cause came on to be heard on the transcript of record from the district court of the 3d judicial district of the Territory of Utah. Was argued by R. N. Baskin, esq., counsel for the appellants, and by Messrs. Geo. E. Whitney and P. L. Williams, of counsel for respondents. The argument was continued over till Thursday, June 15th, 1876.

THURSDAY, *June 15th*, 1876.

JOSEPH M. CAIN ET AL., APPELLANTS,
vs.
BRIGHAM YOUNG ET AL., RESPONDENTS. } Reargument.

On appeal from the 3d dist. court.

The hearing of this cause was resumed. Whereupon, after argument of counsel, the same was submitted and taken under advisement by the court.

360 THURSDAY, *July 6th*, 1876.

JOSEPH M. CAIN ET AL.,
vs.
BRIGHAM YOUNG ET AL. }

On appeal from the 3d dist. court.

In the matter of the several applications of George Stringfellow, Sam'l Stringfellow, W'm Jennings, Joseph M. Cain, Elizabeth Cain, Charles Crismon, and Elizabeth T. Crismon, his wife, Brigham Young, N. Groesbeck, and the heirs of W. Richards, deceased, for deeds of parts of lot 6, block 69, plat A, Salt Lake City, survey from the mayor of said city.

This case having heretofore been argued, submitted, and by the court held under advisement, on this day came the parties by their respective attorneys, and said case was called in its own proper order for decision, and the court having been fully advised in the premises, and having duly considered the same, it is hereby ordered, adjudged, and decreed that the findings and judgment of the 3d dist. court be, and the same are hereby, set aside, reversed, and held for naught. And the court

being fully satisfied that the appellants, Elizabeth Cain, Joseph M. Cain, and Elizabeth T. Crismon, wife of Cha's Crismon, are, and were at the date of the entry of Salt Lake City by the mayor, the rightful occupants of the east half of lot 6, block 69, plat A, Salt Lake City survey, and the said Jo's M. Cain and Elizabeth Crismon are entitled to a deed in fee simple from the mayor of Salt Lake City, Utah Territory,
361 for the undivided two-thirds of the east half of lot 6, block 69, plat A, Salt Lake City survey, and that the said Elizabeth Cain is entitled to a deed from said mayor for an estate in the undivided one-third of said property during her life, or until she shall marry, remainder to the said Joseph M. Cain and Elizabeth T. Crismon.

It is therefore further ordered, adjudged, and decreed that the mayor of said city accordingly execute and deliver to the said Joseph M. Cain & Elizabeth T. Crismon a deed in fee-simple for the undivided two-thirds of said east half of lot 6, block 69, plat A, Salt Lake City survey, and that he execute and deliver unto the said Elizabeth Cain, widow of Joseph Cain, deceased, a deed to her of the undivided one-third of said property for her life or until she shall marry, remainder to the said Joseph M. Cain and Elizabeth T. Crismon, and that said mayor execute and deliver such deeds upon the payment to him of the purchase money, which may by law be required to be paid by the grantees of such deeds.

It is further ordered, adjudged, and decreed that the appellants have and recover of the respondents their costs in this behalf expended, taxed by the court at nine hundred and seventy-nine dollars; and that Samuel and George Stringfellow pay of that amount seventy-five dollars. And the court having made written findings of facts, the
362 same is hereby ordered to be filed, which is accordingly done, and that the same be entered of record.

To the said findings and each of them and to the entry thereof, and to said decree and the entry thereof, the said George Stringfellow and Samuel Stringfellow, and the said William Jennings and Brigham Young, by their respective counsel, duly excepted.

And thereupon Geo. E. Whitney, esq., counsel for George Stringfellow and Samuel Stringfellow, in open court, the counsel for Elizabeth Cain, Jos. M. Cain, Elizabeth T. Crismon and Charles Crismon, j'r, heirs of Joseph Cain, deceased, being present, petitioned for the allowance of an appeal from so much of the decree of this court as awards to the said Elizabeth Cain, Jos. M. Cain, Elizabeth T. Crismon and Charles Crismon, j'r, heirs of Joseph Cain, deceased, the property claimed by said George and Samuel Stringfellow in this proceeding, and directing the mayor of Salt Lake City to execute a deed accordingly, which petition for an appeal was thereupon allowed.

It was also ordered that the amount of the bond on appeal be fixed at three thousand dollars, and when duly executed and approved to operate as a supersedeas. Counsel for Stringfellow thereupon gave notice that they would offer Frank Armstrong and Samuel E. Newton as sureties on such appeal bond.

363 And thereupon on said day in open court Parley L. Williams, esq., of counsel for Brigham Young, and William Jennings, the counsel for Elizabeth Cain, Joseph M. Cain, Elizabeth T. Crismon, and Charles Crismon, j'r, heirs of Joseph Cain, deceased, being present, petitioned the court for the allowance of an appeal to the Supreme Court of U. S., to each of the said applicants, Brigham Young and W'm Jennings, from so much of the decree of this court as awards to the said heirs of the said Joseph Cain, deceased, the property claimed by the said Brigham Young and William Jennings, respectively, in this pro-

ceeding, and directs the mayor of Salt Lake City to execute a deed accordingly, which petition for an appeal is thereupon by the court allowed.

It was also ordered that the bond on said appeal of Brigham Young be fixed at six thousand dollars, and on the appeal of William Jennings at ten thousand dollars, and that when said bonds are duly executed and approved to operate as a supersedeas. Counsel thereupon in open court gave notice that they would offer W'm H. Hooper and H. S. Eldredge as sureties on the bond of Brigham Young, and John Sharp and John Sharp, j'r, as sureties on the bond of W'm Jennings.

364 *Findings of fact in the Supreme Court.*

SATURDAY, *July* 8, 1876.

In the matter of the several applications of Elizabeth Cain, Jos. M. Cain, Elizabeth T. Crismon, and Charles Crismon, heirs of Joseph Cain, deceased, and N. Groesbeck, Brigham Young, W'm Jennings, Sam'l and George Stringfellow, for deeds from the mayor of Salt Lake City for parts of lot 6, block 69, plat "A", Salt Lake City survey. Appeal from the 3d district court by the heirs of Joseph Cain, deceased.

The tract of land upon which stands the city of Salt Lake, in the Territory of Utah, was occupied and possessed by numerous persons while yet it was a part of the public unsurveyed domain of the United States.

That while said tract was so occupied and possessed an act of Congress was passed entitled "An act for the relief of inhabitants of cities and towns upon public lands," approved March 2, 1867, and an act of the Territorial legislature was passed and approved Feb. 17, 1869, "prescribing rules and regulations for the execution of the trusts arising under the act of Congress."

Under and in pursuance of these laws the mayor of Salt Lake City, on the 4th of November, 1871, entered the land, and on June 1st, 1872, obtained a patent from the general government for the tract of land then occupied by said city, in trust for the several use and benefit of the occupants thereof, according to their respective interests, and lot 6, in block 69, plat "A", Salt Lake City survey, was a portion of the tract of land thus held by the mayor in trust.

365 That, as the law required, these several applicants filed in the probate court of Salt Lake County their declaratory statements, claiming parts of said lot. That upon the hearing of the various applications, the probate court gave its judgment, awarding title to various applicants.

That appeal was then taken to the district court, where findings were made and judgment entered, and the heirs of Joseph Cain, deceased, then appealed to this court.

That upon the original settlement and occupancy of Salt Lake City, certain persons assumed the right to distribute, and assign to others, lots and blocks in the city, which right seems to have been acquiesced in by the inhabitants, and among those who assumed this right was W. Richards, now deceased; and that lot 6, block 69, plat A, Salt Lake City survey, was part of the land which he thus assumed to control and assign.

That by arrangement made with said Willard Richards, one Joseph Cain, now deceased, was by said Richards given the possession of the

entire eastern half of said lot 6, block 69, and he, said Cain, under his arrangement with said Richards, moved to said east half lot into a house situated on the north half of said east half of said lot 6. That in about a year and a half after his first entry into and upon said half lot, he built, of his own motion, a new house upon the south half of said lot, into which he moved with his family, and where he and they resided at the time of his death, in 1857.

366 That the residence, the half lot so occupied by Joseph Cain, deceased and his family, constituted their homestead.

That at the death of Joseph Cain he left a widow, Elizabeth Cain, and two children of himself and said Elizabeth Cain, his wife. That said children had not, at their father's death, attained their majority, but were infants of tender age.

That one of their children was named Elizabeth T., and born in 1848, and the other was named Joseph M. Cain, and was born in 1850. The daughter, Elizabeth T. Cain, was married to Charles Crismon, jr., in 1871.

That the family of Joseph Cain continued to reside upon said ground for a number of years after his death. That during his lifetime Joseph Cain exercised acts of ownership over the whole of said half lot, and claimed the ownership of the right of possession to the outside boundaries of said half lot on every side. That his right was recognized by the public generally, and by Willard Richards in particular. That Joseph Cain never in his lifetime surrendered or gave up his right of possession to any part of said east half of said lot.

That after the death of Joseph Cain, Brigham Young set up a claim to the north half of said east half lot, and the widow, not admitting his right, submitted to his claim, and in whom she trusted "as in an angel." That Brigham Young assumed to deed away parts of the north half of said east half, but he never was an occupant of any part thereof at any time, nor entitled to the same.

367 That William Jennings claims the parcel first described in the allotment to him by the dist. court, under a chain of quitclaim deeds from Elizabeth Cain through Charles King, Ransohoff, and Brigham Young, to himself.

The deed from M'r's Cain purported to convey by quitclaim all "her right of claim, interest, and possession." The evidence does not show that Jennings went into possession of this parcel of ground, or ever was an occupant thereof. That when the testimony in the case was being taken in 1872, the Co-operative Mercantile Company were in possession of said ground and paying W'm Jennings rent therefor.

Jennings was in possession in some way, not stated, of No. 45 with extension south; but the precise time and extent of such possession does not appear. He claimed under deed from Brigham Young, who never had been in possession nor had any interest in the property. In September, 1872, the Co-operative Company had a part of a building on this parcel of ground in possession, paying William Jennings rent therefor.

That of fifty-six feet allotted by the dis't court to Jennings in the middle, between the east and west half, the west twenty-six feet is not contested, it being on the west half of lot 6. That the next parcel of fourteen feet, east of this twenty-six feet, was claimed under a deed from William Price, dated in 1869. Price was, it appears, in possession of ground near the centre of the lot in 1856–'7, but the precise ground does not appear. The preponderance of the testimony is, that neither

368 Price nor those under whom he claimed were ever in possession

of any ground east of the centre of the lot, nor entitled at any time to the occupancy of any part thereof.

That in June or July, 1871, W'm Jennings was erecting a brick building, which extended over upon the north end of this fourteen feet; and the walls of said building being advanced ten or twelve feet high, the work was stopped, Jennings having been notified that he was building on the ground of the Cain heirs. That Jennings appears to have been in possession of this parcel of ground, but it appears indefinite as to time and character. That Jennings does not appear to have been an occupant of this ground at the entry of the land.

That the east sixteen feet of this fifty-six feet were held by Jennings under a deed from Brigham Young, as in the former instances, but Young never had had any possession at any time, nor was he at any time in the occupancy of any part of that which was allotted to him by the dist. court.

That Brigham Young was never in possession of No. 47 nor No. 49, the two parcels awarded him by the dist. court, and in his testimony said that he did not own No. 47, the latter of the two parcels, he having deeded his supposed interest away in 1865. He had no interest in said property or either parcel. In Sept., 1872, the Co-operative Company had No. 49 in possession, paying Brigham Young rent therefor.

That Stringfellow brothers held under an administration sale and conveyance. That the sale was made to pay for improvements put on the ground years after the death of Cain, and to pay taxes assessed on the ground years after Cain's death, whilst no administration was
369 had on his estate. That no debts incurred by Joseph Cain remained unpaid at the date when this ground was sold nor when it was asked to be sold. That the children of Jos. Cain, deceased, were not parties to the proceedings and did not appear thereto, either by guardian, or in person, or otherwise. George Stringfellow went into possession Dec. 10, 1869, under said deed, and remained in possession ever since, and that his possession was that of a tenant in common with his brother Samuel. Samuel was no otherwise possessed.

That the price paid by said Stringfellow brothers was the full market value of said parcel of land at the time of their purchase.

That Groesbeck was never in possession, and showed no right thereto.

That after the death of Joseph Cain the widow and the heirs of Jos. Cain, deceased, were the bona-fide occupants of said east half of lot 6, block 69, and have retained actual possession thereof ever since, except as herein otherwise specified; that they are and have been from the death of said Cain inhabitants of Salt Lake City, and are so now.

That they were the occupants of said east half of lot 6, block 69, within the statute, at the time of the entry of said lands by the mayor.

That the evidence does not show that Brigham Young, William Jennings, Nicholas Groesbeck, nor Sam'l Stringfellow to have been inhabitants of Salt Lake City at the date of the entry of said land by the mayor, nor at any subsequent time, nor that they, nor either of them, have any interest in the property nor any part thereof that would
370 entitle them, or either of them, to the government title through the mayor.

That the whole of said east half of lot 6, block 69, was held by Joseph Cain, deceased, and his family in his lifetime, and by his widow and children after his death as their homestead.

That after the death of Jos. Cain, deceased, the minor heirs of Cain resided with their mother, Elizabeth Cain, and continued to so reside

until their majority, she having in the mean time become the polygamous wife of Samuel W. Richards.

Wherefore, by reason of the law and the findings aforesaid, the court make the following findings of conclusions of law: That neither Nicholas Groesbeck, George Stringfellow, Samuel Stringfellow, Brigham Young, nor W'm Jennings are entitled to any deed or title from the mayor for any of said half lot, but that each and every part of said east half of said lot 6 is the property of Elizabeth Cain, Jos. Cain, Elizabeth T. Crismon, heirs at law of Joseph Cain, deceased, and they are entitled to a deed therefor from the mayor of said Salt Lake City.

July 6, 1876.

(Signed) M. SCHAEFFER,
Chief Justice.
JACOB S. BOREMAN,
Associate Justice.

NOTE.—These above findings are entered as of on Thursday, July 6th 1876.

371 In the supreme court of Utah Territory, June term, 1876.

In the matter of the several applications of Joseph M. Cain, Brigham Young, William Jennings et al., for deeds to parts of lot 6, block 69, plat A, Salt Lake City.

Appeal from 3d district court.

BOREMAN, justice, delivered the opinion:

The contest in these proceedings is for the government title to certain lands under the "town-site" law of Congress. The mayor of Salt Lake City holds the title in trust for the persons entitled thereto, under the provisions of the law. The various parties to these proceedings filed their claims with the probate court, asking title. The heirs of Joseph Cain, deceased, prayed for title to the whole of the east half of lot 6, block 69, plat A, Salt Lake City survey. The other parties claim fractional parts of said half lot. These claims being conflicting, the probate court considered all the claims together, and subdivided the half lot amongst the parties filing on it. This subdivision not being satisfactory, an appeal was taken to the district court. In the district court a finding of facts was had, and judgement and decree accordingly. The Cain heirs, not being satisfied with the action of the district court, have brought the subject, by appeal, to this court; a motion for a new trial having been overruled. The main question involved is as to which of these claimants are "occupants," as contemplated by the "town-
372 site" law. This statute was made for the relief of the "inhabitants" of the towns and cities upon the public domain. It was made to secure to those "inhabitants" who are "occupants," the legal title according to their "respective interests." To give one a right to the conveyance of the government title, it must appear that he is an "inhabitant" of the town, an occupant of the ground to which he seeks a title, and have an "interest" in the property. The occupancy must be actual, individual occupancy, not an occupancy begun and held by agent merely.

If a person resided upon a parcel of ground, or carried on his business upon the ground, and claimed the whole of the parcel or lot, he might have title to the whole, unless some part be occupied by another per-

o claiming right to the title. Then the question would arise as to which exercised acts of ownership over the disputed ground first, and to what extent; and if that be settled, then was the claim ever abandoned or given up, and, if so, whose possession in good faith attached after the abandonment. We do not think that the law of Congress ever contemplated that a party should claim title to more lots or parcels than he actually, individually, occupied. Otherwise a person could gain title to an unlimited amount, by not occupying it himself, but by arranging with various agents that they move upon the lots and hold for him, and these agents to lay no claim to title, but let the employer
373 claim all. The employer might thus gain title to the various parcels or lots without ever being an occupant or an inhabitant, and could prove his right by simply showing, not his possession but possession by other men for him—he never having been individually in possession. Such a proceeding would be at war with the very object of the law, which was made for actual settlers and not for speculators. A man having made a bona fide, actual, individual occupancy, either for his residence or his business, or in some way for his own use, he may, no doubt, afterwards sell his right of possession, his preference or right to government title, but he must first have been an occupant in good faith, himself, and the purchaser must take actual possession also and become an occupant.

There is nothing in the rule we lay down which prohibits contracts, leases, or sales of such interests, but they can only be made to or with "inhabitants" who can become occupants if the right of preference in obtaining title is to be affected. Such sales, leases, and other contracts are not discouraged or prohibited by the law, nor by the policy of the law. The government only says, that if the contract be with one not an "inhabitant," and who does not become an occupant, such contract or sale will not be recognized in ascertaining to whom the title should be granted. A party in possession of any such city or town lot will
374 be presumed to be so in possession in his own right and for his own use and benefit, until the contrary appears. And the possession of the ancestor when dying is the possession of the heir unless the contrary appears.

These are some of the principles which will control us in the examination of the merits and rights involved in the proceedings at bar.

When Salt Lake City was first settled the place was laid out, or the laying out dictated, by Brigham Young, Willard Richards, and others, yet Brigham Young claimed to have "exclusive control" in making the settlement. Shortly after the first settlers came and the town was laid out, certain parties, among whom was Willard Richards, were allowed to select portions of the city, each portion composed a number of lots or blocks, all in a body, in order to distribute the lots to those whom they desired to have near them. It appears that lot 6, block 69, was among the lots selected by Willard Richards under this arrangement. He turned the east half of the lot over to Joseph Cain, and marked the boundary between the east and west half; he gave Cain possession of a house situated on the north half of this east half, and he had the public records made to show that this east half was the property of Cain; and there is evidence going to show that Cain bought and paid for the half lot. Cain moved upon the lot and lived there until his death.
375 He exercised acts of ownership over the half lot, and it was assessed in his name and he paid taxes on the same until his death, and being so in possession the current of the evidence is that he claimed the whole of the same to the boundaries of the half lot on every side,

and that his possession and ownership of possession were recognized by Willard Richards and the public generally. The heirs of Willard Richards claim nothing now in this proceeding, not having appealed, but they have made two deeds for portions of the disputed part, one to Brigham Young and one to William Jennings, the effect of which will be considered hereafter.

At the death of Joseph Cain he was in the undisputed possession of all of said half lot, although M'r's Ogden was living on the lot, but she claimed no ownership of the possession, and moved off shortly after Cain's death. The appellants claim that in the findings of fact by the district court there has been a failure to find that Brigham Young, William Jennings, Samuel Stringfellow, George Stringfellow, and Nicholas Groesbeck, or either of them, ever have been "inhabitants" of Salt Lake City or of Utah Territory. The law, as we have stated, requires that the persons claiming must, to entitle them to deeds, be "inhabitants." Inhabitancy was an essential fact, and should have been found.

The appellants further claim that there was a failure to find that
376 Young, Jennings, Stringfellows, or Groesbeck was in possession at the date of entry. The law requires that the parties, or perhaps those under whom they claim, should have been in possession at the date of the entry by the mayor. It was, therefore, an essential fact, and the failure to find thereon was error.

The appellants, the heirs of Joseph Cain, take exceptions to the findings of fact made by the district court, and allege that the material findings to which they object as erroneous are as follows:

1st. It is found "that if said Joseph Cain ever occupied or claimed the right of possession of any portion of the north half of the east half of said lot after he moved into the new house, his heirs and representatives soon after his decease surrendered and gave up such possession."

II. It is found that portions of the south half of the east half of said lot, formerly in the possession of the heirs of Joseph Cain, "have been sold," and the possession delivered to the persons named in the judgment and decree of the court, with the particular description of the portion which each was in possession of and entitled to.

III. It is found "that the north half of the east half of said lot has been subdivided, and the occupancy, possession, and right of possession have been in various persons; and that the persons named in the judgment and decree of the court are in possession and entitled to the possession of the several particular descriptions of land given in connection with their names."

The first of these points, the alleged surrender of possession of the north half of the east half of said lot by the heirs of Joseph Cain after Joseph Cain's death, we consider is well taken; for we are unable
377 to discover facts which would warrant the finding, certainly none so far as the children of Cain are concerned. They have never done anything that could indicate that they gave up or surrendered any rights which they have to such north half. The widow did not control this portion of the ground, although Joseph Cain had possession of it when he died. She said that Brigham Young claimed it, and she did not question his right; for in those days no one questioned what their leaders did, but, as she says, she would have taken the word of the leaders in those days as readily as she would "an angel." Such implicit confidence and faith in him were simply abused by Brigham Young, and he used it to take away from this widow and her infant children property to which he did not have the shadow of a right.

The finding, therefore, of a surrender of said north half we deem erroneous.

The second of these material findings to which exception is taken, has reference to a sale which it alleges took place of portions of the south half, which had prior thereto been in possession of the heirs of Cain. One would naturally conclude from the reading of this finding, that the heirs had sold such portions as are referred to, or at least were parties to some sale. Nothing of the kind appears, however, from the evidence. The parties referred to as having been the purchasers of parcels of said south half were Nicholas Groesbeck and the Stringfellow brothers. Groesbeck's portion is very small, being only sixteen (16) inches fronting on East Temple street, and running back (west) nine rods. Not a solitary witness was introduced to support Groesbeck's claim; nor any written or oral testimony, and there is an abso-
378 lute want of any evidence on the point, except an incidental reference thereto in M'r's Cain's testimony, she saying that she sold a strip off, as she thought, that width to M'r Groesbeck. Even then there is nothing in the evidence to show where these sixteen inches were or how long the strip was, or that she ever delivered the possession of it to M'r Groesbeck, or whether Groesbeck ever was in possession; nor is there anything to show that any interest of the children was intended to be conveyed, nor indeed is there anything to show whether she sold as an individual or administratrix, or as guardian, although as it is mentioned in connection with the sale to the Stringfellow brothers, it might be inferred to have been a sale as administratrix. But upon this inference we could not depend. There is, therefore, no proof to support M'r Groesbeck's claim, and it must fall.

The Stringfellow brothers have allotted to them, on the north of and adjoining the parcel allotted to Groesbeck, a parcel of ground, fronting on East Temple (Main) street, sixteen feet and three inches; running back west eight rods, with the road privilege on the west. The road privilege was merely a written consent given by Richards and Elizabeth Cain, as individuals, and without consideration, and of course was subject to revocation at any time, even if S. W. Richards and Elizabeth Cain had the right to make it. The Stringfellow brothers claim their parcel of ground (not including the roadway) under a sale and deed from S. W. Richards and Elizabeth Cain, administrators of Joseph Cain, deceased, made in pursuance of an order of the probate court, administration on the estate of Joseph Cain, deceased,
379 which was taken out more than ten years after his death. Such is the verbal proof, and there is no other kind of proof that any administration was ever taken out. S. W. Richards and Elizabeth Cain, claiming to be administrators, filed their petition in the probate court on Nov. 4th, 1869, praying "for an order to sell real estate" upon the ground that the estate was, at that date, "involved in consequence of loaning money to erect buildings thereon, upon which interest is being paid, and also in consequence of taxes accumulating, while rents have been rapidly declining, by which the obligations and the expenses of the estate have to be maintained." There is no evidence that when administration was taken out any debts or other obligations of the deceased remained unpaid, but, on the contrary, the administrator, Richards, testifies that no such claims were ever presented to him, and that he believed they were all paid out of the personal effects of the deceased long before application was made to sell the real estate, and that the sale was made to raise money for the support of the family, to pay for improvements, taxes &c., and that all this indebtedness accrued from

three to ten years after Cain's death; and Mrs. Cain says that the sale was not made to pay debts incurred by Joseph Cain deceased. What interest, then, passed by such sale, and the conveyance thereunder? The probate court is an inferior court, one of limited jurisdiction. It has no power not given to it by statute.

Our Territorial statute (Utah Laws 1852, p. 41, s. 16) says that personal and real property may both be sold upon the order of court, but it does not authorize the real estate to be sold except to pay debts,
380 and then only when the personal property is insufficient to pay the charges against the estate. These facts must appear affirmatively. The parties to this proceeding, and also the administrators, treated these possessory rights as real estate. The statute likewise treated them as real estate, for the statute speaks of real estate, and none existed if these rights be not such, for they were the highest interest that an individual could have to land when the statute was passed, and it is not to be presumed that the statute was not meant to apply to them, but only to something that did not then exist.

Whether they are strictly real estate or not, as understood at common law, we are inclined to hold that the laws of those early dates intended them to be treated as real estate. But whether we deem such possessory rights as real estate or as personal property, we are unable to see how such property could be sold under the law referred to concerning decedents' estates. If it was personal property it was not claimed to be of a "perishable nature," or likely to "depreciate in value." But it may be said that, although this property was not "perishable" or liable to "depreciate," and although no debts existing against the estate at the death of Joseph Cain, deceased, remained unpaid, yet that years after his death a large indebtedness was incurred against his estate. Who was authorized to incur such indebtedness? There was no administration. The property had descended to the heirs and could not be taken away from them by an administration, unless debts in-
381 curred by Joseph Cain in *in* his lifetime remained unpaid. The guardian might incur debts for the support and education of the children, but this is not a case of that kind. Some unauthorized person years after Cain's death puts up improvements on the land of the heirs of Joseph Cain, and it is sought to pay therefor by taking out letters of administration and selling the property under the administration. That cannot be right. And, further, the administrators had no authority whatever to pay debts and charges against the estate, even if in existence, until they were proven in manner prescribed by law, allowed by the court, and the administrator cannot pay for the support of the widow and children except under the order of court. No debts were proved up and no allowance for support made. But really all these charges, including the taxes, were against the heirs if against any one at all, and the administration had nothing to do with them. The sale, therefore, under which the Stringfellow brothers claim, being unauthorized by law—the court having no power to make it—the sale and conveyance are null and void, and the parties take nothing by them. They are, therefore, upon the ground, if at all, wrongfully, and can only be treated as trespassers, and trespassers can have no rights as against the true and rightful claimants.

Next adjoining the "Stringfellow" ground lies that which was allotted to the Cain heirs, about which there is no contest (except,
382 perhaps, as to a small piece on the back part of the lot.) Adjoining on the north to the parcel allotted to the Cain heirs, lies the "Ransahoff" property, as it is called. It is part of the south half of

this east half lot, and was allotted by the district court to William Jennings, it being No. 51, with extension back. Jennings claims the ground under a chain of quitclaim deeds from Elizabeth Cain, through Charles King, Ransahoff, and Brigham Young to himself.

The quitclaim deed of Mrs. Cain purported to convey only her "right of claim interest and possession." Of course such a deed conveyed no interest of the minor heirs, if they had any. Did they have any? The Territorial statute says that if there be "other property" remaining it shall "descend in equal shares to his children," the widow taking a child's part during her life or widowhood. The interest which her deed therefore purported to convey was only equal to a child's part during her life or widowhood, and at her death or marriage it became the property of the two children. Under that statute therefore the children of Cain had a valid and perfect right to a title for two-thirds of said parcel, with the further right to the residue at the death or marriage of their mother. And we can see no reason why such a statute of descents is not valid. (Utah Laws, p. 43, s. 24.) It in no way affected the "primary disposal of the soil," it does not seem to be inconsistent with any law of Congress, and it is a proper subject of Territorial legislation.

If, therefore, Jennings was in possession, it was only as co-occupant
383 with the heirs. His interest could only be that of the widow—one-third interest for the life or widowhood of Mrs. Cain. He cannot by having possession of such an interest thereby obtain a right to oust the two heirs. He only becomes a co-occupant with the heirs—a possession in the nature of a tenancy in common. The courts are generally inclined to guard the interests of minors, and will not allow them to be deprived of any rights except under proceedings by proper suit to which they are parties. The conveyances set up as the foundation of Jennings' claim recognize and support the rights of the children. They are a recognition of Joseph Cain's rights, and that is a recognition of theirs. But there is no evidence that Jennings ever went into possession of this property. Then, in saying to whom the government title should go, his claim could not be recognized. If he had gone into possession under Mrs. Cain's title he would have complied with the requirements of the United States statute, which is that, to be recognized as being entitled to the government title, the party must be an "occupant," and this he was not at any time. He can therefore have no right to any share in the property. If he has any remedy it is against Mrs. Cain. He shows no right to a preference in the purchase of the government title.

Let us look then at the third point, the exception to finding respecting the north half of this east half-lot, together with the strips or parcels claimed by Jennings across the whole west end of the east
384 half-lot. The first allotment to William Jennings was No. 45, according to the plat, including its extension somewhat farther west than is indicated by the plat. In 1861, Brigham Young deeded "all of his right of claim, interest, and possession" in and to said parcel of ground to William Jennings. It nowhere appears that Young had any "right of claim," "interest," or "possession" to convey. He therefore could convey none. He himself says that whatever possession he might have had was as trustee in trust for the church, of which he is the head, and not as an individual. The church has made no conveyance and lays no claim to the lot, and files no declaratory statement therefor. The deed, therefore, from Young to Jennings is valueless, although there is testimony to show that Jennings intended to have Young make his title good. There is evidence that Jennings was at one time "in possession of and exercised acts of ownership" over the

Eagle Emporium building, situated No. 45. But he was not in possession at Cain's death, and there is no evidence that he was in possession at the entry of the "town site" by the mayor. The character of his possession is not shown, it not being shown that he lived there or did business in such building; nor does it appear that he held possession by consent of the heirs. If his possession was not by their consent, legally obtained, by proper action to which they were parties,
385 they being under age, their rights are in no way bound or affected by his possession. It is not claimed that any such suit was ever had. If, therefore, Jennings went into possession under authority given by Brigham Young in his deed, and depended upon Young's supposed power to compel a good title to the possession from Cain' heirs, and Young has failed to be able to compel such title, Jennings cannot make the heirs bear the consequences, but he must look to Young for his remedy. The heirs are not bound by any arrangement he and Young may have made. Jennings, therefore, being in possession at one time, was there wrongfully, and as a trespasser, and gained no rights which could be recognized in ascertaining to whom the legal title should be made. This finding and the allotment following to Jennings was, therefore, erroneous.

The last parcel allotted to Jennings is fifty-six feet north front, on first south street. The west twenty-six feet of this north front, running clear across the lot, are upon the west half of lot 6, and not contested, and therefore not to be disturbed by this court. The east sixteen feet of the remaining thirty feet of said allotment is held under no deed, or any other kind of transfer of possession, and if Jennings be in possession it was as in the last instance as a trespasser, as to the Cain heirs, no authority from said heirs ever having been obtained. The allotment of this sixteen feet front (and running south) to Jennings was there-
386 fore erroneous. Now respecting the fourteen feet lying between the sixteen and twenty-six feet referred to, there is some doubt. Price seems to have been in possession in 1856–'7 of forty feet north front, running across the lot. We hear no more of him until 1869, when he makes a deed to W'm Jennings of forty feet front and running across the lot, and the fourteen feet in question is embraced therein. In giving his testimony Price says that he does not know what distance from the east line of the lot his ground was situated, and the great preponderance of testimony is that Price's possession was on the west half of the lot and not on the east half. The simple fact that Price's deed fixes one hundred and fifty-one (151) feet as the distance from the east line of the lot does not prove that the deed from Eddins to him gave the same description, or that Eddins put him in possession of the same, and the evidence shows that Eddins' ground was west of the centre of the lot, and we cannot say that the statement in Price's deed should override the testimony of numerous witnesses, and the very actions of D'r Richards himself, especially when Price himself does not seem to have been in possession for some twelve years before his deed was made. A deed is also shown in evidence from Willard Richards' heirs to Jennings, covering this fourteen feet. But that deed is subsequent to Jenning's filing, and besides we think that the evidence clearly shows that the Richards' heirs had no rights or interests in such property or
387 the possession to pass by such conveyance.

The deed of course is of no value so far as these fourteen feet are concerned. There is some evidence going to show Jennings' possession, although the evidence is very indefinite as to the precise ground possessed by him. His possession, however, was without authority and

wrongful, and in no way can invalidate the rights of the heirs of Joseph Cain, deceased, when they have given no consent thereto, and it was subsequent to the death of Joseph Cain, deceased. The remaining portions of said findings, objected to as stated, refer to parcels allotted to Brigham Young by the district court, and numbered 47 and 49 with extensions back to the west. Brigham Young testifies that he never lived on any portion of lot 6, now in controversy. Yet he claimed to have had peaceable possession of portions of it for many years, not in his individual right; but as trustee in trust for the church of which he is the head. The church making no claim, his possession as trustee, if it ever existed, would effect nothing in the present proceedings, but he really never was in possession as contemplated by the statute. The fact that he sent Mrs. Ogden down to Joseph Cain with direction to him to measure her off a piece for a house, gave him no rights, as her occupancy was only temporary, and so intended; and he had never been in possession prior thereto. It was evidently only in exercise of that "exclusive control over the settlement" which he had claimed, but which gave
388 him no right in or to the real estate. It was a permission from Joseph Cain to Mrs. Ogden to use the ground for a time, and not a transfer of his right thereto. Jennings claims also under a deed from Willard Richards' heirs, made only a few days before the filing of his declaratory statement. He never had possession under that deed, and all of Willard Richards' right had been transferred to Joseph Cain in his lifetime.

The fact that two women, Mrs. Braddock and Mrs. Franklin, who held the relation of polygamous wives to Willard Richards, resided a short while on the lot after it was transferred to Cain by Richards, does not show that Richards still claimed said lot. Such an inference would be very slight when compared with Richards' own positive acts, showing the contrary. The occupancy by these women was not Richards' occupancy. The law does not recognize the polygamous relation, and that is all that gives color to the idea that their possession was his possession. They laid no claim to the possession themselves, and removed at the request of Cain. Joseph Cain had lived in that house himself before these women were there, and used to rent it, and rented it after they removed.

There seems nothing in the evidence to warrant the belief that there remained in the heirs of Willard Richards any, even the slightest, claim or right to any part of this half lot.

Brigham Young says in his testimony, that he does not own parcel No. 47, but that it belongs to the co-operative institution. His
389 deed to Bassett and Roberts shows that he conveyed to them all his interest in that parcel in 1865, and he says himself that it never was deeded back to him; yet, he claims it. His claim has no foundation in justice. He was never an occupant of No. 47, nor of No. 49, within the meaning of the statute, and can have no rights therein. His claim was only such as any one of a thousand men on the street might set up and be able to maintain with as strong evidence as he has done. It is simply a claim for title, and that is all there is in it. He has shown no right to the title. It was, therefore, error to allow his claim.

The heirs of Joseph Cain, deceased, had possession of this whole half-lot when Joseph Cain died, and they never gave up that possession, and they are not bound to submit, because being under age the control of the lot passed from them without their consent. They had until their majority to enforce their claims.

But there is another reason why none of the claimants aside from the heirs of Joseph Cain, deceased, can possibly have any rights to any of this half lot: Joseph Cain died leaving that property, the whole half-lot, in the possession of his wife and children as a homestead.

The Territorial statute says "the homestead occupied by the wife, or any portion of the family of the deceased at the time of his death, shall in all cases be held free to the use of the wife and family of the deceased, and shall not be liable to any claim or claims against said estate." What authority did the probate court have to order the sale of it, even to pay debts if any had existed? What right did the widow have
390 to sell any of it, or to give up possession to others as against the heirs? Certainly none. It shall be held "free to the use of the wife and family," and she cannot curtail this right in the heirs.

If she had no authority to sell even to pay debts, she certainly could not give the property away to the detriment of the minor children; which it is claimed that she virtually did do as to the north half. She says that Brigham Young claimed it and she submitted to his claim. That does not arise, however, to the dignity of a gift. It was only yielding to a claim, which she could not oppose or repel.

The courts cannot recognize that any individual has the right to go upon property which has descended to infant heirs, and to hold such property because the heirs cannot drive them off, and then to come into a court of equity and claim the title based upon his trespass. Such a trampling upon the rights of infant heirs, those who look with strongest claims to the courts for protection, cannot be tolerated, but the rightful possessor and claimant must be reinstated in his rights and given the legal title.

There seems, therefore, no valid reason why the heirs of Joseph Cain, deceased, should not have the title to the east half lot in question. Therefore the judgment of the court below is reversed, and it is ordered and adjudged in this court that the children and heirs of Joseph Cain, deceased, have the right to title in fee-simple to the undivided
391 two-thirds interest in said half lot; and that the widow has the right to title to one undivided third interest for life, or widowhood, with remainder in fee to the children and heirs; and it is ordered that the mayor convey accordingly.

Schaeffer, C. J., concurs.

(Endorsed:) Filed in office of clerk of sup. court, July 6th, A. D. 1876. Cha's A. Gould, clerk, by H. A. Gould, dep'ty clerk.

Bonds on appeal.

In the Supreme Court of the United States.

In the matter of the several applications of Samuel Stringfellow, George Stringfellow, William Jennings, Joseph M. Cain, Charles Crismon, Elizabeth T. Crismon, his wife, Elizabeth Cain, Brigham Young, Nicholas Groesback, and the heirs of Willard Richards, deceased, for deeds from the mayor of Salt Lake City for a part of lot 6, block 69, plat A, Salt Lake City survey.

On appeal from the supreme court of Utah Territory.

Know all men by these presents that we, George Stringfellow and Samuel Stringfellow, of Salt Lake City and County, as principals, and Thomas W. Jennings and Samuel E. Newton, of the same place, as sure-

ties, are held and firmly bound unto Joseph M. Cain, Elizabeth Cain, Elizabeth T. Crismon, and Charles Crismon, j'r, heirs of Joseph Cain, deceased, all of said Salt Lake City, in the sum of three thousand dollars, to be paid to the said Joseph M. Cain, Elizabeth Cain, Elizabeth Crismon, and Charles Crismon, j'r, and to their and each of heirs, executors, or
392 administrators, to which payment well and truly to be made we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals, and dated at said Salt Lake City this fifteenth day of July, anno Domini one thousand eight hundred & seventy-six.

Whereas the above-named George Stringfellow and Samuel Stringfellow have taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled proceeding by the supreme court of the Territory of Utah:

Now, therefore, the condition of this obligation is such that if the above-named George Stringfellow and Samuel Stringfellow shall prosecute their said appeal to effect, and answer all damages and costs if they shall fail to make good their appeal, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

GEORGE STRINGFELLOW. [SEAL.]
SAMUEL STRINGFELLOW. [SEAL.]
THOMAS W. JENNINGS. [SEAL.]
D'R SAMUEL E. NEWTON. [SEAL.]

Sealed & delivered in presence of—
JAMES N. KIMBALL.

Approved July 14th, 1876.

M. SCHAEFFER,
Chief Justice of Sup. Court of Ter. of Utah.

(Endorsed:) Supreme Court of the United States. In the matter of the application of Cain's heirs & others, for deed of part of lot 6, block 69, plat A, Salt Lake City. Survey bond on appeal. Filed in office of clerk of sup. court, July 15th, A. D. 1876. Cha's A. Gould, clerk, by H. A Gould, deputy clerk.

393 Know all men by these presents that we, William Jennings, as principal, and William H. Hooper and Horace S. Eldridge, as sureties, all residents of Salt Lake City, in the Territory of Utah, are held and firmly bound unto Joseph M. Cain, Elizabeth Cain, Charles Crismon, and Elizabeth T. Crismon, his wife, in the full and just sum of ten thousand (10,000) dollars, to be paid to the said Joseph M. Cain, Elizabeth Cain, Charles Crismon, and Elizabeth T. Crismon, their certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents, sealed with our seals, and dated this seventeenth day of July, in the year of our Lord one thousand eight hundred and seventy-six.

Whereas lately, at a supreme court of the Territory of Utah, in a suit depending in said court, to wit, in the matter of the several applications of Samuel Stringfellow, George Stringfellow, William Jennings, Joseph M. Cain, Elizabeth Cain, Charles Crismon, and Elizabeth T. Crismon, his wife, Brigham Young, Nicholas Groesbeck, and the heirs of Willard Richards, deceased, for deeds from the mayor of Salt Lake City, for a part of lot 6, block 69, plat A, Salt Lake City survey, a judgment and decree was rendered against the said William Jennings for the portion

of the said lot claimed by him, and awarding the title thereof to the said Joseph M. Cain, Elizabeth Cain, and Elizabeth T. Crismon, and the said William Jennings having obtained and taken an appeal from the said judgment and decree to the Supreme Court of the United States, and
394 has procured a citation directed to the said Joseph M. Cain, Elizabeth Cain, Elizabeth T. Crismon, and Charles Crismon, her husband, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now the condition of this obligation is such that if the said William Jennings shall prosecute his said appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

W'M JENNINGS, [SEAL.]
By THOMAS W. JENNINGS, [SEAL.]
Attorney in Fact.
W. H. HOOPER. [SEAL.]
H. S. ELDREDGE. [SEAL.]

TERRITORY OF UTAH,
Salt Lake County, ss:

William H. Hooper and Horace S. Eldredge, being each duly sworn, on his oath deposes and says that he is a resident of Salt Lake City, in said Territory, and that he is worth the sum of ten thousand dollars over and above his debts, liabilities, and property exempt from execution.

W. H. HOOPER.
H. S. ELDREDGE.

Subscribed & sworn to before me this 17th day of July, A. D. 1876.
M. SCHAEFFER,
Chief Justice Sup. C't U. T.

(Endorsed:) Cain et al. vs. Young et al. Bond of W'm Jennings on appeal. Approved this 17th day of July, A. D. 1876. M. Schaeffer, chief justice sup. court U. T. Filed in office of clerk of sup. court of U. T. July 17th, A. D., 1876. Cha's A. Gould, clerk, by H. A. Gould, dep'ty clerk.

395 Know all men by these presents that we, Brigham Young, as principal, and John Sharp and John Sharp, j'r, as sureties, all residents of Salt Lake City, in the Territory of Utah, are held and firmly bound unto Joseph M. Cain, Elizabeth Cain, Charles Crismon, and Elizabeth T. Crismon, his wife, in the full and just sum of six thousand (6,000) dollars, to be paid to the said Joseph M. Cain, Elizabeth Cain, Charles Crismon, and Elizabeth T. Crismon, their certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these present, sealed with our seals, and dated this seventeenth day of July, in the year of our Lord one thousand eight hundred and seventy-six.

Whereas lately, at a supreme court of the Territory of Utah, in a suit depending in said court, to wit, in the matter of the several applications of Samuel Stringfellow, George Stringfellow, William Jennings, Joseph M. Cain, Elizabeth Cain, Charles Crismon and Elizabeth T. Crismon, his wife, Brigham Young, Nicholas Groesbeck, and the heirs of Willard Richards, deceased, for deeds from the mayor of Salt Lake City, for a part of lot 6, block 69, plat A, Salt Lake City survey, a judgment and

decree was rendered against the said Brigham Young for the portion of the said lot claimed by him; and awarding the title thereof to the said Joseph M. Cain, Elizabeth Cain, and Elizabeth T. Crismon, and the said Brigham Young having obtained and taken an appeal from the said judgment and decree to the Supreme Court of the United States,
396 and has procured a citation directed to the said Joseph M. Cain, Elizabeth Cain, Elizabeth T. Crismon and Charles Crismon, her husband, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, therefore, the condition of this obligation is such that if said Brigham Young shall prosecute his said appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

BRIGHAM YOUNG. [SEAL.]
JOHN SHARP. [SEAL.]
JOHN SHARP, J'R. [SEAL.]

TERRITORY OF UTAH,
Salt Lake County, ss:

John Sharp and John Sharp, j'r, being each duly sworn, on his oath deposes and says that he is a resident in Salt Lake City, in said Territory, and that he is worth the sum of six thousand dollars over and above his debts, liabilities, and property exempt from execution.

JOHN SHARP.
JOHN SHARP, JR.

Subscribed and sworn to before me this 17th day of July, A. D. 1876.

M. SCHAEFFER,
Chief Justice Sup. Ct. U. T.

(Endorsed:) Cain et al. v. Young et al. Bond of Brigham Young on appeal.

Approved this 17th day of July, 1876.

M. SCHAEFFER,
Chief Justice.

Filed in office of clerk of sup. court of U. T., July 17, A. D. 1876.
CHA'S A. GOULD, *Clerk.*
By H. A. GOULD, *Dep'ty Clerk.*

397 In the matter of the several applications of Joseph M. Cain, Elizabeth Cain, Elizabeth T. Crismon, and Charles Crismon, jr., her husband, George Stringfellow, Samuel Stringfellow, Nicholas Groesbeck, William Jennings, and Brigham Young, for deeds from the mayor of Salt Lake City to parts of lot 6, block 69, plat A, Salt Lake City survey.

TERRITORY OF UTAH,
County of Salt Lake, ss:

James T. Little, being duly sworn, on his oath says that he is twenty-eight years old, that he resides in Salt Lake City, in said county and Territory, and has resided therein constantly since childhood.

He further says that he is well acquainted with the value of real estate in said city. That he knows the location and value of the land in controversy in the above-entitled matter, including the building situated thereon. That the portion of said land awarded to Samuel Stringfellow

and George Stringfellow, by the decree of the third district court of said Territory in said matter, including the building thereon, is worth the sum of eleven thousand (11,000) dollars. That the portion of the said land, with the buildings thereon, awarded by the said district court to the said William Jennings, is worth the sum of eighty thousand (80,000) dollars. That the portion of the said land awarded to the said Brigham Young by the said district court, including the buildings situated thereon, is worth thirty thousand (30,000) dollars.

JAMES T. LITTLE.

398 Subscribed and sworn to before me this 22d day of August, A. 1876.

E. T. SPRAGUE,
Clerk of Supreme Court, Utah Territory.

(Endorsed:) Brigham Young et al. vs. Joseph M. Cain et al. Affidavit of value of property. Filed August 22d, 1876, in my office. E. T. Sprague, clerk of the supreme court for Utah Territory.

UNITED STATES OF AMERICA,
Territory of Utah, City and County of Salt Lake, ss:

I, Ezra T. Sprague, clerk of the supreme court in and for the Territory of Utah, in pursuance of said appeal, hereby certify that the foregoing is a full, true, and correct transcript of the records and proceedings in this cause on file and of record in my office, and a full, true, and correct copy of the original opinion and affidavit of value of property also on file in my office.

I witness whereof I hereunto set my hand and affix the seal of said court, at said city of Salt Lake, this 26th day of September, A. D. 1876.

[SEAL.] EZRA T. SPRAGUE,
Clerk Supreme Court, Utah Territory.

399 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the Territory of Utah, greeting:

Because in the record and proceedings, as also in the rendition of the judgment, order, and decree in a suit which is in the said supreme court of the Territory of Utah, before you, in the matter of the several applications of Samuel Stringfellow, George Stringfellow, William Jennings, Joseph M. Cain, Elizabeth Cain, Charles Crismon, and Elizabeth T. Crismon, his wife, Brigham Young, Nicholas Groesbeck, and the heirs of Willard Richards, deceased, for deeds from the mayor of Salt Lake City for a part of lot 6, block 69, plat A, Salt Lake City survey, manifest error hath happened, to the great damage of the said Samuel
400 Stringfellow, George Stringfellow, William Jennings, and Brigham Young, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

401 Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, and the seal of the supreme court of the Territory of Utah, the seventeenth day of July, in the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.] CHA'S A. GOULD,
Clerk of the Supreme Court of Utah Territory,
By H. A. GOULD,
Deputy Clk.

(Indorsed:) Cain et al. v. Young et al. Writ of error. Filed in office of cl'k of sup. court of U. T., July 17th, A. D. 1876. Cha's A. Gould, clerk, by H. A. Gould, D. clerk.

402 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Joseph M. Cain, Elizabeth Cain, Charles Crismon, and Elizabeth S. Crismon, his wife, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the Territory of Utah, wherein Samuel Stringfellow, George Stringfellow, William Jennings, and Brigham Young are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

403 Witness the honorable Michael Schaeffer, chief justice of the said supreme court of the Territory of Utah, this seventeenth day of July, in the year of our Lord one thousand eight hundred and seventy-six.

M. SCHAEFFER,
Chief Justice of the Supreme Court of Utah Ter.

TERRITORY OF UTAH,
Salt Lake County, ss:

On this the 22nd day of July, A. D. 1876, personally appeared Parley L. Williams, of lawful age, before me the undersigned, who being by me duly sworn, on his oath deposes and says that he delivered a true copy of the within citation to Robert N. Baskin, esqr., one of the attorneys of record of the said defendants in error, on the 19th day of July, 1876.

M. SCHAEFFER,
Chief Justice of Supreme Court of Terr'y of Utah.

(Indorsed:) Cain et al. v. Young et al. Citation. Filed in office of clerk of sup. court of Utah Ter. July 22nd, A. D. 1876. Cha's A. Gould, clerk, by H. A. Gould, dep'ty clerk.

404 Know all men by these presents that we, Samuel Stringfellow, George Stringfellow, William Jennings, and Brigham Young, as principals, and John Sharp and William H. Hooper, as sureties, all residents of Salt Lake City, in the Territory of Utah, are held and firmly bound unto Joseph M. Cain, Elizabeth Cain, Charles Crismon, and Elizabeth T. Crismon, his wife, in the full and just sum of one thousand (1,000) dollars, to be paid to the said Joseph M. Cain, Elizabeth Cain,

Charles Crismon, and Elizabeth T. Crismon, their certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this seventeenth day of July, in the year of our Lord one thousand eight hundred and seventy-six.

Whereas, lately, at a supreme court of the Territory of Utah, in a suit depending in said court, to wit, in the matter of the several applications of Samuel Stringfellow, George Stringfellow, William Jennings, Joseph M. Cain, Elizabeth Cain, Charles Crismon, and Elizabeth T. Crismon, his wife, Brigham Young, Nicholas Groesbeck, and the
405 heirs of Willard Richards, deceased, for deeds from the mayor of Salt Lake City, for a part of lot 6, block 69, plat A, Salt Lake City survey, a judgment and decree was rendered against the said Samuel and George Stringfellow, William Jennings, and Brigham Young for the portions of said lot claimed by them respectively, and awarding the same to the said Joseph M. Cain, Elizabeth Cain, and Elizabeth T. Crismon, and the said George Stringfellow, Samuel Stringfellow, William Jennings, and Brigham Young, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the said judgment and decree in the aforesaid suit, and a citation directed to the said Joseph M. Cain, Elizabeth Cain, Elizabeth T. Crismon, and Charles Crismon, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now the condition of the above obligation is such that if the said Samuel Stringfellow, George Stringfellow, William Jennings, and Brigham Young shall prosecute their said writ of error to effect and
406 answer all costs and expenses if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

W'M JENNINGS. [SEAL.]
By THOMAS W. JENNINGS, [SEAL.]
Attorney in Fact.
JOHN SHARP. [SEAL.]
W. H. HOOPER. [SEAL.]

(Indorsed:) Joseph M. Cain et al. Bond on writ of error approved this 17th day of July, A. D. 1876. M. Schaeffer, chief justice of sup. court U. T. Filed in office of clerk of sup. court of U. T. July 17th, A. D. 1876. Cha's A. Gould, clerk, by H. A. Gould, dep'ty cl'k.

407 In the matter of the several applications of Joseph M. Cain, Elizabeth Cain, Elizabeth T. Crismon, Charles Crismon, jun., Nicholas Groesbeck, George Stringfellow, Samuel Stringfellow, William Jennings, and Brigham Young, for deeds from the mayor of Salt Lake City for portions of lot 6, block 69, plat A, Salt Lake City survey.

GEORGE STRINGFELLOW, SAMUEL STRINGfellow, William Jennings, and Brigham Young, plaintiffs in error,
vs.
JOSEPH M. CAIN, ELIZABETH CAIN, AND Elizabeth T. Crismon, defendants in error.

Whereas the said plaintiffs in error entertain some doubts
408 whether the above-entitled matter is removed from the supreme

court of Utah Territory to the Supreme Court of the United States by appeal or writ of error, and have therefore sued out the writ of error herein, and also taken an appeal to the said Supreme Court of the United States:

Now, therefore, it is hereby stipulated and agreed by and between the attorneys of the said plaintiffs in error and defendants in error, respectively, that the transcript of the record in said matter filed in the office of the clerk of the Supreme Court of the United States upon the said appeal may be used as and constitute the record upon the said writ of error in said court, the defendants in error reserving the right to make any objections as to form or substance of the record.

409 Signed at Salt Lake City this 23d day of August, A. D. 1876.

GEORGE E. WHITNEY,
WILLIAMS & YOUNG,
Att'ys for Plaintiffs in Error.
BASKIN & DE WOLFE,
Att'ys for Defendants in Error.

(Indorsed:) George Stringfellow et al., pl'ffs in error, vs. Joseph M. Cain et al., def'ts in error. Stipulation. Filed in the office of the clerk of the supreme court of Utah Territory August 23d, 1876. E. T. Sprague, clerk.

410 UNITED STATES OF AMERICA,
Territory of Utah, City and County of Salt Lake, ss:

I, Ezra T. Sprague, clerk of the supreme court in and for the Territory of Utah, hereby certify that, in obedience to the commands of the writ of error hereto attached, I return said original writ, with the original citation thereon issued and affidavit of the service thereof written thereon, and a copy of a stipulation on file in my office pertaining to the record and proceedings in said supreme court in the said writ mentioned; and I further certify that such copy is a full, true, and correct copy of said stipulation and the endorsements thereon.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at said Salt Lake City, in said Territory of Utah, this 24th day of August, A. D. 1876.

[SEAL.]

E. T. SPRAGUE,
Clerk Supreme Court, Utah Territory.

411 In the Supreme Court of the United States.

In the matter of the several applications of Elizabeth Cain, Joseph M. Cain, Elizabeth L. Crismon, Cha's Crismon, jun'r, heirs of Joseph Cain, deceased, and Nicholas Groesbeck, Brigham Young, William Jennings, Sam'l Stringfellow, George Stringfellow, for deeds from the mayor of Salt Lake City for parts of lot 6, block 69, plat A, Salt Lake City survey.

The said Samuel Stringfellow and George Stringfellow, appellants, by G. E. Whitney, esq're, their attorney, come now and, *and* not waiving their right to make hereafter a further assignment of error, say that there is manifest error in the record and proceedings of the supreme court of the Territory of Utah herein, in this, viz:

1st. The said court erred in reversing the judgment and decree of the 3rd district court of said Territory.

2nd. That the said supreme court erred in proceeding to a trial of said

application and in not remanding the same to the said district court upon a reversal of a decree thereof.

412 3rd. That the said supreme court erred in entering a decree in favour of the said Joseph M. Cain, Elizabeth T. Crismon, and Elizabeth Cain, directing a deed to be issued to them for the portion of said lot which was awarded to these appellants by the said district court.

4th. That the said supreme court erred in rendering its decree against these appellants for the portion of said lot claimed by them upon the facts found by said supreme court, for the reason that the said findings of fact do not support the said decree.

5th. That the said supreme court erred in decreeing that the mayor of Salt Lake City execute and deliver to the said Elizabeth Cain a deed of the undivided one-third of the lot claimed by these appellants for her life or until she shall marry, remainder to the said Joseph M. Cain and Elizabeth S. Crismon.

Wherefor' these appellants pray that the judgment and decree of the said supreme court of the Territory of Utah be reversed and that a mandate issue from this court, directing the said supreme court of

413 the Territory of Utah to affirm the judgment and decree of said district court, or for such other mandate or direction as shall be in accordance with the law and facts unto which these appel'ants may be entitled.

GEO. E. WHITNEY,
Att'y & of Counsel for
Geo. & Sam'l Stringfellow, Appellants.

(Indorsed:) Supreme Court of the United States. In the matter of the application of Joseph M. Cain and others, etc. Assignment of errors of Geo. & Sam'l Stringfellow.

414 In the matter of the several applications of Elizabeth Cain, Joseph M. Cain, Elizabeth T. Crismon, and Charles Crismon, j'r, heirs of Joseph Cain, deceased, and N. Groesbeck, Brigham Young, William Jennings, Samuel and George Stringfellow, for deeds from the mayor of Salt Lake City for parts of lot 6, block 69, plat A, Salt Lake City survey.

The said William Jennings, the appellant in the above matter, comes now, by George E. Whitney and Williams & Young, his counsel therein, and says there is manifest error in the record and proceedings of the supreme court of the Territory of Utah, in this, viz:

1st. The said court erred in reversing the judgment and the decree of the district court of the third judicial district of said Territory.

2nd. The said court erred in proceeding to a trial of the said matter and in not remanding the same to the said district court for a new trial upon the reversal of the decree thereof.

3rd. The said court erred in rendering and entering its decree in favor of the said appellees, Joseph M. Cain, Elizabeth T. Crismon, and Elizabeth Cain, for the title of the portion of the land in contro-

415 versy which was awarded to the appellant, William Jennings, by the said district court.

4th. The said court erred in rendering its decree in favor of the said appellees upon the facts found, for the reason that the said findings of fact do not support the said decree.

5th. The said court erred in decreeing that the mayor of Salt Lake City execute and deliver to the said Elizabeth Cain a deed of the un-

divided one-third of the land in controversy for her life or until she shall marry, remainder to the said Joseph M. Cain and Elizabeth T. Crismon.

6th. The said court erred in making its findings of facts, for the reason that the evidence adduced does not support the same.

Wherefore the said appellant prays that the judgment and decree of the said supreme court of the Territory of Utah may be reversed and that a mandate may issue from this court, directing the said supreme court of the said Territory to affirm the judgment and decree of the said district court.

416 We have, and hereby do reserve the right to add to, alter, or amend these assignments of error in our briefs prior to the argument of this case.

WILLIAMS & YOUNG,
Attorneys and Counsel for Appellants.

GEO. E. WHITNEY,
Of Counsel.

TERRITORY OF UTAH,
County of Salt Lake, ss:

I, E. T. Sprague, clerk of the supreme court for the Territory of Utah, hereby certify that the foregoing is a true, full, and correct copy of an assignment of errors in said cause on file in my office.

In witness whereof I hereunto set my hand and the seal of said court this 26th day of September, 1876.

[SEAL.]

E. T. SPRAGUE,
Clerk Supreme Court.

(Indorsed:) In the Supreme Court of U. S. Brigham Young et al. v. Joseph M. Cain et al. Assignment of errors. Copy.

417 In the matter of the several applications of Elizabeth Cain, Joseph M. Cain, Elizabeth T. Crismon, and Charles Crismon, jr., heirs of Joseph Cain, deceased, and N. Groesbeck, Brigham Young, William Jennings, Samuel and George Stringfellow, for deeds from the mayor of Salt Lake City for parts of lot 6, block 69, plat A, Salt Lake City survey.

The said Brigham Young, the appellant in the above matter, comes now, by George E. Whitney and Williams & Young, his counsel therein, and says there is manifest error in the record and proceedings of the supreme court of the Territory of Utah herein, in this, viz:

1st. The said court erred in reversing the judgment and decree of the district court of the third judicial district of said Territory.

2nd. The said court erred in proceeding to a trial of the said matter and in not remanding the same to the said district court for a new trial upon the reversal of the decree thereof.

3rd. The said court erred in rendering and entering its decree
418 in favor of the said appellees, Joseph M. Cain, Elizabeth T. Crismon, and Elizabeth Cain, for the title of the portion of the land in controversy which was awarded to the appellant, Brigham Young, by said district court.

4th. The said court erred in rendering its decree in favor of the said appellees upon the facts found, for the reason that the said findings of fact do not support the said decree.

5th. The said court erred in decreeing that the mayor of Salt Lake City execute and deliver to the said Elizabeth Cain a deed of the undivided one-third of the land in controversy for her life or until she

shall marry; remainder to the said Joseph M. Cain and Elizabeth T. Crismon.

6th. The said court erred in making its findings of fact, for the reason that the evidence adduced does not support the same.

Wherefore the said appellant prays that the judgment and decree of the said supreme court of the Territory of Utah may be reversed and that a mandate may issue from this court, directing the said supreme court of the said Territory to affirm the judgment and decree of
419 the said district court.

We have, and hereby do reserve the right to add to, alter, or amend the within assignment of errors, or make new ones in our briefs prior to the argument of this case.

WILLIAMS & YOUNG,
Attorneys & Counsel for Appellants.

GEO. E. WHITNEY,
Of Counsel.

TERRITORY OF UTAH,
Salt Lake County, ss:

I, E. T. Sprague, clerk of the supreme court of said Territory of Utah, hereby certify that the foregoing is a full, true, and correct copy of an assignment of errors in said cause on file in my office.

In testimony whereof I hereunto set my hand and the seal of said court this 26th day of September, A. D. 1876.

[SEAL.] E. T. SPRAGUE,
Clerk Sup. Court Utah Territory.

(Indorsed:) In the Supreme Court U. S. Brigham Young et al. v. Jos. M. Cain et al. Assignment of errors. Copy.

(Indorsement on cover:) No. 181, 182. Samuel Stringfellow, George Stringfellow, William Jennings, and Brigham Young, appellants, plaintiffs in error, vs. Joseph M. Cain, Elizabeth Cain, Charles Crismon, & Elizabeth S. Crismon. Utah Terr'y sup. court. Filed 4th October, 1876.

In the Supreme Court of the United States.

UTAH LAND CASES.

SAMUEL STRINGFELLOW, GEORGE STRINGFELLOW, WILLIAM JENNINGS, AND BRIGHAM YOUNG, APPELLANTS,

vs.

JOSEPH M. CAIN, ELIZABETH CAIN, CHARLES CRISMON, AND ELIZABETH T. CRISMON.

No. 181. October Sessions, 1878.

and

SAMUEL STRINGFELLOW, GEORGE STRINGFELLOW, WILLIAM JENNINGS, AND BRIGHAM YOUNG, PLAINTIFFS IN ERROR,

vs.

JOSEPH M. CAIN, ELIZABETH CAIN, CHARLES CRISMON, AND ELIZABETH T. CRISMON.

No. 182. October Sessions, 1878.

ERROR AND APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF UTAH.

BRIEF OF THE PLAINTIFFS IN ERROR AND APPELLANTS.

CONTENTS.

		PAGE
I.	Statement showing how the case arose	1
II.	History of the case	36
III.	Assignment of errors	67
IV.	Brief of argument	83

SHEEKS & RAWLINS,
WILLIAMS & YOUNG,
Salt Lake City,

A. SYDNEY BIDDLE,
GEORGE W. BIDDLE,
Philadelphia

Of Counsel with the Appellants.

Allen, Lane & Scott, Printers, 233 South Fifth Street, Philadelphia.

UTAH LAND CASES.

STATEMENT SHOWING HOW THE CASE AROSE.

On the 2d of March, 1867, an act of Congress was passed providing for the entry of certain public lands, then belonging to the United States, in trust for the occupants, by the corporate authorities of the respective towns, within the limits of which the land was situated. Up to the date of the passage of that act, the legal title to the property within its purview was in the United States. It is true that in many instances squatting had taken place, and in some cases, *e. g.*, in the settlement of the Mormon towns in Utah, regularly constituted municipalities had arisen, the inhabitants of which claimed the soil by right of occupation through their president, and adversely to the Government of the United States, but which as against the latter, had of course no title.

It became important, as these communities came more and more frequently into contact with the other inhabitants of this country, to lay down a fundamental law as the basis of titles to real estate, to prevent dispute as far as might be, and, at least, to avoid physical altercation between the Government and the settlers. This object was sought to be carried out by the provisions of the act mentioned. (Rev. Stat., second edition, 1878, page 437.) Its language is as follows:—

"SECTION 2387.—Whenever any portion of the public lands have been or may be settled upon and occupied as a town site, not subject to entry under the agricultural pre-emption laws, it is lawful, in case such town be incorporated, for the corporate authorities thereof, and, if not incorporated, for the judge of the county court for the county in which such town is situated, to enter at

the proper land-office, and at the minimum price, the land so settled and occupied in trust for the several use and benefit of the occupants thereof, according to their respective interests; the execution of which trust, as to the disposal of the lots in such town, and the proceeds of the sales thereof, to be conducted under such regulations as may be prescribed by the legislative authority of the State or territory in which the same may be situated."

"SEC. 2388. The entry of the land provided for in the preceding section shall be made, or a declaratory statement of the purpose of the inhabitants to enter it as a town site shall be filed with the register of the proper land office, prior to the commencement of the public sale of the body of land in which it is included, and the entry or declaratory statement shall include only such land as is actually occupied by the town, and the title to which is in the United States; but in any territory in which a land office may not have been established, such declaratory statements may be filed with the surveyor-general of the surveying district in which the lands are situated, who shall transmit the same to the General Land Office."

Under the authority of that statute the legislature of Utah passed an act of Assembly, (Compiled Laws of Utah, edition of 1876, page 379, &c.), in the following terms:—

AN ACT

Prescribing rules and regulations for the execution of the trust arising under an act of Congress, entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2d, 1867.—Approved February 17th, 1869.

(1166.) SECTION 1. Be it enacted by the governor and legislative assembly of the territory of Utah that

when the corporate authorities of any town or city, or the probate judge of any county in this territory, who for the purpose of this act and of receiving and executing the trust declared by the act of Congress hereinafter mentioned, shall be deemed and is hereby designated as the judge of the county court for such county), in which any town or city may be situated shall have entered at the proper land office, the land or any part of the land settled and occupied as the site of such town, pursuant to and by virtue of the provisions of the act of Congress, entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2d, 1867, and any amendments that may be made thereto, it shall be the duty of such corporate authorities or judge (as the case may be), and they are hereby directed and required, to dispose of and convey the title to such land, or to the several blocks, lots, parcels, or shares thereof, to the persons entitled thereto, to be ascertained as hereinafter prescribed. Deeds of conveyance for the same shall be executed by the mayor of the city or town under the seal of the corporation, when the entries shall be made by the corporate authorities of such city or town, and by the judge of probate when the entry shall be made by such judge, and in all cases said deeds shall be acknowledged before and certified by an officer competent under the laws of this territory to take acknowledgments of deeds of conveyance of real estate.

(1167.) SEC. 2. That within thirty days after the entry of any such lands, the corporate authorities, or judge entering the same, shall give public notice of such entry in at least five public places within such town or city, and by publishing such notice in some newspaper printed and published in this territory, having a general circulation in such town or city. Said notice shall be published once in each week for at least three successive

months, and shall contain an accurate description of the lands so entered as stated in the certificate of entry or duplicate receipt received from the officer of the land office.

(1168.) SEC. 3. That each and every person, or association, or company of persons, or corporation claiming to be the rightful owner of possession, occupant or occupants, or to be entitled to the occupancy or possession of such lands, or to any lot, block, share, or parcel thereof, shall, within six months after the first publication of such notice, in person, or by his, her, or their agent or attorney, sign a statement, in writing, containing an accurate description of the particular parcel or parts of land in which he, she, or they claim to have an interest, and the specific right, interest, or estate therein, which he, she, or they claim to be entitled to receive, and deliver the same to the clerk of the probate court of the county in which such town or city is situated, and the clerk of said court shall enter such statement in a book to be kept for that purpose, and file and preserve the same in his office, noting the day of filing. The filing of which statement shall be considered notice to all persons claiming any interest in the lands described therein of the claim of the party filing the same; and all persons failing to make and deliver such statement within the time limited in this section, shall be forever barred the right of claiming or recovering such land, or any interest or estate therein, or in any part, parcel, or share thereof, in any court of law or equity: *Provided*, That when good cause is shown why such statement could not be filed within the time herein specified, the judge may extend the time, not exceeding one year from the first publication of said notice.

(1169) SEC. 4. That if, at the expiration of six months after the first publication of the notice, as aforesaid, it

shall be found by the statement filed that there are adverse claimants to any tract or parcel of land, it shall be the duty of the judge of probate to cause notice to be served upon said claimants, or their agents or attorneys (taking up each case in the order of filing), to appear before the probate court of the county in which such tract or parcel of land may be situated, and prosecute their claim upon a day to be appointed by said court, not less than five nor more than thirty days from the service of such notice; the statement filed as aforesaid, shall stand in said court in the place of pleadings, and an issue be made thereon; and on the day set for the hearing the judge shall proceed to hear the proof adduced and allegations of the parties, and decide according to the justice of the case. The court shall cause full minutes of the testimony to be kept, which shall be preserved with the papers in the case and be entered upon the records of said court, with the decision at length. If either party shall feel aggrieved at the decision of said court, he, she, or they shall have the right of appeal to the district court, as in other cases, and upon the perfection of such appeal, the court shall cause the testimony and written proofs adduced, together with the statements of the parties, and the judgment of the court, to be certified to the district court, to be there tried anew, without pleadings, except as above provided.

(1170.) SEC. 5. That after the expiration of the six months, provided in section three of this act, for filing statements in cases where there are no adverse claimants, the court shall cause a summons to be issued and served upon the party filing such statement, or his, her, or their agent, requiring him, her, or them, or their agent or attorney, to appear before said court, upon a day designated, not less than three nor more than ten days from service of such summons, and to make proofs in support

of such statement, full minutes of which shall be kept; and the court, if satisfied from the proofs of the validity of such claim, shall cause judgment to be entered of record, and the minutes of the proof to be preserved, as required in section four of this act; and thereupon, shall certify the fact to the mayor of the city or town in cases where the corporate authorities shall have made the entry, who shall make to the party claimant a deed of conveyance for the tract or parcel of land so adjudged him, her, or them. If the court shall decide against the validity of such claim, the decision shall, in like manner be entered of record, and the minutes of testimony preserved; and in all cases appeals and writs of error shall be allowed from the decision of such court to any party in interest, as in other cases. In cases where the entry shall have been made by the probate judge, the conveyance shall be made by him, in accordance with the judgment entered as aforesaid. Each case shall be taken up by the court in the order in which the statements have been filed. If the judge of probate shall be a claimant of lands in any city or town in his county, he may file the statement required in section three of this act, in the probate court of an adjoining county, who shall cause notices thereof to be given to all adverse claimants, if any, and to the mayor of such city or town, and in cases of unincorporated towns, to the justice of the peace of the precinct in which such town may be situated; and the probate court of such adjoining county shall proceed in the examination and decision of the case as provided in this act, as in other cases, and upon the certificate of said court, a deed to the lands shall be made to the party or parties entitled thereto, as provided in this section: *Provided*, That if there shall be an adverse claimant or claimants to any tract so claimed by any judge of probate, and a statement shall have been filed, as required in section three of this act, the probate court shall cause

the same to be certified to the probate court of the county selected to hear and determine such case. A copy of the final judgment, appealed under this act, shall authorize the mayor or judge to make conveyance, as hereinbefore provided as in other cases, or withhold it, according to such judgment. In cases where the judge of probate, who shall hold the lands in trust, is a party claimant to any portion thereof, and the final judgment of the proper tribunal shall be in his favor, such decision shall operate to discharge the trust in the portion of land so assigned to him. If the mayor of any city or town shall be a claimant of any lands in such city or town, the recorder of such city shall, upon the certificate of the probate court, made as in case of other claimants, execute a deed of conveyance to such mayor for the lands finally adjudged to him by the court, under the same rules and regulations as prescribed in other cases.

(1171.) SEC. 6. That a change of venue, as in suits at law, shall be allowed in all cases arising under this act.

(1172.) SEC. 7. That within thirty days after the expiration of the six months prescribed in section 3, for filing statements, the corporate authorities or judge holding the title to the lands described in the notice published, as required in section two, shall make a statement in writing, containing a true account of all moneys by them or him expended in the acquisition of the title, and the administration or execution of the trust to that time, including the money paid by them or him for the purchase of said lands, all necessary traveling expenses, all moneys paid for publishing or posting notices, and for all other necessary and proper expenses incident to such trust to that time, which statement shall be filed in the office of the clerk of the probate court of the county in which such town or city may be situated, and shall be open for

inspection by all persons interested during ordinary business hours.

(1173.) SEC. 8. That before the corporate authorities or judge holding any such lands in trust as aforesaid shall be required to execute, acknowledge, or deliver any deed of conveyance thereof, as hereinbefore provided, to any person or persons claiming and adjudged to be entitled to such deed, such person or persons shall pay or tender to the mayor or judge, as the case may be, the sum of money chargeable on the part thereof to be conveyed by such deed, to be ascertained by taking the whole amount of the cost of the land of which it is a part, and expenses stated in the account, as prescribed in section 7, in the proportion which the area of such lot shall bear to the whole amount of land entered, after deducting the area of all streets, alleys, and public grounds in such city or town, and the reasonable charges for preparing, executing, and acknowledging such deed, including the interest on the money expended; *Provided*, errors in measurement or computation shall not invalidate any proceedings under this act.

(1174.) SEC. 9. That whenever the title to such lands shall be held by the corporate authorities of any town or city, all lands designated for public use by such corporate authorities as streets, lanes, avenues, alleys, parks, commons, and public grounds, shall vest in and be held by the corporation absolutely, and shall not be claimed adversely by any person or persons whatsoever; and the judge of probate who shall have entered any lands in trust for any town or city which may afterwards become incorporated, shall, under the same conditions, convey by deed to the corporation thereof the lands designated for the use of the public, as aforesaid; that in the case of death or disability of the judge of probate or mayor who

may have entered the lands in trust for any town or city under the law of Congress, as aforesaid, before the complete execution of such trust, the same shall vest in his successor in office, who shall proceed with the execution of the same in the same manner, and under the same conditions imposed by this act upon the judge or mayor receiving the trust in the first instance.

(1175.) SEC. 10. If there shall remain any unclaimed lands within the limits of such city or town after the expiration of six months from the publication of the notice provided in section 3, the corporate authorities, in cases where the lands shall have been entered by them, and the judge of probate, in cases where the lands shall have been entered by him, shall cause the same to be surveyed and laid out into suitable blocks and lots, and shall reserve such portions as may be deemed necessary for public squares, school-houses, or hospital lots, and shall cause all necessary streets, roads, lanes, and alleys to be laid out through the same, a plot of which, properly certified, shall be recorded in the recorder's office of the county in which the same may be situated; and the mayor of such city or town, or judge, as aforesaid, may sell the lots or blocks so laid out, and not reserved for public use, in suitable parcels, to possessor of adjoining lands, or to other citizens of such city or town, at a price not less than five dollars per acre or fraction of an acre, and in case two or more persons apply for the same tract they shall sell the same by auction to the highest bidder; and if any such lands remain unsold at the end of three months from the date of filing the plan thereof for record, as required herein, the corporate authorities, or judge, as aforesaid, shall have power and authority to sell such vacant lands at public or private sale in such manner, and on such terms as they may deem advisable for the best interests of the city or town, and shall give deeds therefor to the several purchasers.

(1176.) SEC. 11. That all moneys arising from the sale of lands entered in trust by the corporate authorities of any city or town, or by the judge of probate, under the said act of Congress, after deducting all moneys paid for said lands, and the expenses incurred in the management and execution of the trust shall be paid into the county treasury for the support and maintenance of common schools in said city or town, to be applied and expended in such manner as shall be provided by law.

(1177.) SEC. 12. That the several officers hereinafter mentioned may charge and collect the following fees for their services under this act, viz :—The judge of probate, for hearing proofs, and giving judgment in each contested case, one dollar and fifty cents; in each case where there is no contest, one dollar; for preparing and executing each deed, fifty cents, exclusive of revenue stamps; for each certificate embodying a copy of the record of the decision of the court, twenty-five cents. The clerk of the probate court, for each summons or subpœna, twenty-five cents; for filing each statement, and entering the same, ten cents; swearing each witness, five cents; for certificate and seal to each certificate of title, twenty-five cents; for each certificate of acknowledgement of deed, with seal, twenty-five cents. The mayor of the city, for preparing and executing each deed of conveyance, fifty cents, exclusive of revenue stamps. The sheriff or constable, for serving process of summons or subpœna, twenty-five cents; for each mile actually traveled in serving process, ten cents.

On the 4th of November, 1871, in pursuance of the authority vested in him for that purpose by the foregoing acts, the mayor of Salt Lake City entered the tract of land, then and now known as Salt Lake City, in the proper land office, in trust for the several use and benefit

of the occupants thereof, according to their respective interests, and on the 1st of June, 1872, obtained a patent from the General Government for the tract of land then occupied by the city, in trust, as aforesaid (Record, 283).

The present case is one which has arisen under these statutes, and the question involved is the proprietorship of the various portions of the lot in Salt Lake City, known as the east half of lot 6, block 69, plot A, Salt Lake City survey.

In accordance with the regulations prescribed in the territorial statute (Compiled Laws of Utah, ed. of 1876, chapter IV., page 380, (1168), section 3), the various claimants filed their declaratory statements in the probate court of the county of Salt Lake. (See these statements in full, Record 16-20.) The claimants consisted of the appellants, the appellees, the heirs of Willard Richards, claiming as one person, a part of the lot, and Nicholas Groesbeck claiming another part. All the claims to the title to this one-half lot and various portions of it, were heard together and made in the territorial courts, as they do here, but one case. The testimony was originally taken before the probate judge, and was reduced to writing by the clerk of that court, and signed by the witnesses. The suit was begun by the filing on the 11th of December, 1871, of the declaratory statement of the Stringfellow Brothers, in the office of the probate court of the county of Salt Lake. The other claimants filed their respective statements (Jennings) in December, 1871; (Brigham Young) in January, (Cain heirs) in March, (the heirs of Willard Richards) in May, 1872; and (Nicholas Groesbeck, by special permission to file after the prescribed time) in July, 1873. The testimony was begun on the 17th of August, 1872, and ended on the 24th of October, 1872.

The cause was held under advisement in the probate court until the 12th of April, 1873, when a decision was

made awarding the lot, in the proportions shown in the accompanying plan, to Groesbeck, the Stringfellows, the Cain heirs, Jennings, and Brigham Young. From this decree the Cain heirs, Brigham Young, the heirs of Willard Richards, and Jennings appealed to the District Court of the third judicial district of the territory of Utah. The cause was tried there (Record 16, statement on motion for new trial) on the 20th of August, 1873, before the court, without a jury, on the respective declaratory statements of the parties, and testimony and written proofs adduced; all of which evidence was certified to the district court by the probate court. Upon that evidence the district court, on the 11th of September, 1874, delivered the following opinion, (Record, 267–8):—

"This case comes before this court on an appeal from the judge of probate of Salt Lake county, and was tried by this court without a jury, and upon the filings and testimony in the probate court. Much of the testimony is mere hearsay, and as such testimony is liable to be very conflicting. As fished out from this great mass of hearsay and conflicting testimony, the following are the main facts as found by the court:—

"That the tract of land upon which stands the city of Salt Lake was occupied and possessed by numerous persons, while a part of the public unsurveyed domain of the United States.

"That under an act of Congress of March 2d, 1867, entitled 'An act for the relief of inhabitants of cities and towns upon public lands,' and an act of the territorial legislature, approved February 17th, 1869, containing numerous provisions regulating the rights of settlers, and the manner in which their rights shall be ascertained. Under the said act of Congress, the mayor of Salt Lake City obtained a deed from the General Government for the territory occupied by said city, in

trust for those who are rightfully entitled to the same, and these proceedings were commenced in the probate court of Salt Lake county by the several applicants, to determine to whom the deed or deeds should be given by the mayor for a portion of lot 6, block 69, plot A, of the Salt Lake City survey, said lot being a portion of the original survey of said city.

"That upon the original settlement and occupancy of the city, certain persons assumed the right to distribute and assign to others lots and blocks in the city, which right seems to have been acquiesced in by the inhabitants; that among those who assumed this right, was one 339] Willard Richards, now deceased; and that said lot 6, block 69, was a part of the tract of land which he claimed, and exercised the assumed right to thus assign and allot.

"That at the request of said Willard Richards, and under a promise to give him a lot to build upon, one Joseph Cain, now deceased, moved on to the east half of said lot, and that the house into which he first moved was situated upon the north half of the east half of said lot; that he soon after built a house upon the south half of the east half of said lot, into which he moved with his family, and where he and they resided at the time of his death in 1857; and that his family continued to reside there for some considerable time after his death.

"The evidence in relation to the extent of the occupancy of Joseph Cain, after he moved into what is termed in the testimony his 'new house,' on the south half, is very conflicting. From the whole testimony, however, the court finds this to be the fact: That he occupied the south half of the east half of said lot 6, as far west and back to a line fourteen (14) feet east of the west line of the east half of said lot 6.

"That if the said Joseph Cain ever occupied or claimed the right of possession of any portion of the north half

of the east half of said lot, after he moved into the new house, his heirs and representatives, soon after his decease, surrendered and gave up such possession, and are not now, and have never since that time been, in possession of any portion of said north half; that the heirs and representatives of Joseph Cain, deceased, are in possession and entitled to the possession of that portion of the south half of the east half of lot 6, block 69, plot A, Salt Lake City survey, hereinafter particularly described in the judgment and decree of the court in relation to the certificate to be issued to them; that the balance of said south half, formerly in their possession, has been sold, and the possession delivered to the persons named in said judgment and decree of the court with the particular description each is now in possession of and entitled to.

"That the north half of the east half of said lot has been subdivided, and that the occupancy, possession, and right of possession has been in various persons, and that the persons hereinafter named in the judgment and decree of the court are in possession, and entitled to the possession of the several particular descriptions of land given in connection with their names.

"That the heirs of Willard Richards, deceased, are not now in possession, or entitled to the possession, of any fraction of said lot 6, claimed or filed on by them.

"Wherefore, by reason of the law and the findings aforesaid, it is ordered, adjudged, and decreed that it be certified to the mayor of Salt Lake City as follows, viz.:— (Here follows the decree of the District Court, see Record 268, *et seq.*)"

A motion for a new trial was made and dismissed (Record, 277) on the 29th of November, 1874, whereupon an appeal was taken to the Supreme Court of Utah, counsel agreeing (Record, 277) that a statement, agreed

to be used in the District Court, on the motion for a new trial (see statement, Record, 16), should be used on the appeal in the former court.

The cause was argued, on appeal, in the Supreme Court of Utah, on the 13th and 14th of January, 1875, and re-argued on the 14th and 15th of June, 1876, (Record, 279, 281); and on the 6th of July, 1876, a decree was entered in that court, reversing the decree of the District Court, and awarding the whole of the half lot to the Cain heirs, the present appellees (Record, 281, 283). A finding of facts (Record, 283, 286) and opinion (Record, 286, 294) were filed as of the same day. The Chief Justice (SCHAEFFER) and BOREMAN, J., concurred in the reversal, the finding of facts, and the opinion (Record, 286 and 294); but EMERSON, J., the third judge of the Supreme Court, who, as district judge, had decided the case, did not concur in any of these proceedings.

FINDING OF FACTS IN THE SUPREME COURT.

The tract of land upon which stands the city of Salt Lake in the territory of Utah was occupied and possessed by numerous persons while yet it was a part of the public unsurveyed domain of the United States.

That while said tract was so occupied and possessed, an act of Congress was passed, entitled "An act for the relief of inhabitants of cities and towns upon public lands," approved March 2d, 1867, and an act of the territorial legislature was passed and approved February 17th, 1869, "prescribing rules and regulations for the execution of the trust arising under the act of Congress."

Under and in pursuance of these laws the mayor of Salt Lake City, on the 4th of November, 1871, entered the land, and on June 1st, 1872, obtained a patent from the General Government for the tract of land then occupied by said city, in trust for the several use and benefit

of the occupants thereof, according to their respective interests, and lot 6, in block 69, plat A, Salt Lake City survey, was a portion of the tract of land thus held by the mayor, in trust.

365] That, as the law required, these several applicants filed, in the probate court of Salt Lake county, their declaratory statements, claiming part of said lot. That, upon the hearing of various applications, the Probate Court gave its judgment, awarding title to various applicants.

That appeal was then taken to the District Court, where findings were made and judgment entered, and the heirs of Joseph Cain, deceased, then appealed to this court.

That upon the original settlement and occupancy of Salt Lake City, certain persons assumed the right to distribute and assign to others lots and blocks in the city, which right seems to have been acquiesced in by the inhabitants, and among those who assumed this right was W. Richards, now deceased, and that lot 6, block 69, plat A, Salt Lake City survey, was part of the land which he thus assumed to control and assign.

That by arrangement made with said Willard Richards, one Joseph Cain, now deceased, was, by said Richards, given the possession of the entire eastern half of said lot 6, block 69, and he, said Cain, under his arrangement with said Richards, moved to said east half lot, into a house situated on the north half of said east half of said lot 6. That in about a year and a half after his first entry into and upon said half lot, he built, of his own motion, a new house upon the south half of said lot, into which he moved with his family, and where he and they resided at the time of his death, in 1857.

366] That the residence, the half lot so occupied by Joseph Cain, deceased, and his family, constituted their homestead.

That at the death of Joseph Cain he left a widow, Elizabeth Cain, and two children of himself and said Elizabeth Cain, his wife. That said children had not, at their father's death, attained their majority, but were infants of tender age.

That one of their children was named Elizabeth T., and born in 1848, and the other was named Joseph M. Cain, and was born in 1850. The daughter, Elizabeth T. Cain, was married to Charles Crismon, Jr., in 1871.

That the family of Joseph Cain continued to reside upon said ground, for a number of years after his death.

That during his life-time, Joseph Cain exercised acts of ownership over the whole of said half lot, and claimed the ownership of the right of possession to the outside boundaries of said half lot on every side. That his right was recognized by the public generally, and by Willard Richards in particular. That Joseph Cain never, in his lifetime, surrendered or gave up his right of possession, to any part of said east half of said lot.

That after the death of said Joseph Cain, Brigham Young set up a claim to the north half of said east half lot, and the widow, not admitting his right, submitted to his claim, in whom she trusted "as in an angel." That Brigham Young assumed to deed away parts of the north half of said east half, but he never was an occupant of any part thereof at any time, nor entitled to the same.

367] That William Jennings claims the parcel first described, in the allotment to him by the District Court, under a chain of quit-claim deeds from Elizabeth Cain through Charles King, Ransohoff, and Brigham Young, to himself.

The deed from Mrs. Cain purported to convey by quit-claim, all "her right of claim, interest, and possession." The evidence does not show that Jennings went into possession of this parcel of ground, or ever was an

occupant thereof. That when the testimony in the case was being taken in 1872, the Co-operative Mercantile Company, were in possession of said ground and paying William Jennings rent therefor.

Jennings was in possession in some way, not stated, of No. 45, with extension south; but the precise time and extent of such possession does not appear. He claimed under deed from Brigham Young, who never has been in possession, nor had any interest in the property. In September, 1872, the Co-operative Company had part of a building on this parcel of ground in possession, paying William Jennings rent therefor.

That of fifty-six feet allotted by the District Court to Jennings, in the middle, between the east and west half, the west twenty-six feet is not contested, it being on the west half of lot 6. That the next parcel of fourteen feet, east of this twenty-six feet, was claimed under deed from William Price, dated in 1869. Price was, it appears, in possession of ground near the centre of the lot in 1856–7, but the precise ground does not appear. 368] The preponderance of testimony is that neither Price, nor those under whom he claimed, were ever in possession of any ground east of the centre of the lot, nor entitled, at any time, to the occupancy of any part thereof.

That in June or July, 1871, William Jennings was erecting a brick building, which extended over upon the north end of this fourteen feet; and the walls of said building being advanced ten or twelve feet high, the work was stopped, Jennings having been notified that he was building on the ground of the Cain heirs. That Jennings appears to have been in possession of this parcel of ground, but it appears indefinite as to time and character. That Jennings does not appear to have been an occupant of this ground at the entry of the land.

That the east sixteen feet of this fifty-six feet were held by Jennings under a deed from Brigham Young, as

in the former instances, but Young never had had any possession at any time, nor was he at any time in the occupancy of any part of that which was allotted to him by the district court.

That Brigham Young was never in possession of No. 47 nor No. 49, the two parcels awarded him by the district court, and in his testimony said that he did not own No. 47, the latter of the two parcels, he having deeded his supposed interest away in 1865. He had no interest in said property or either parcel. In September, 1872, the Co-operative Company had No. 49 in possession, paying Brigham Young rent therefor.

That Stringfellow Brothers held under an administration sale and conveyance. That the sale was made, to pay for improvements put on the ground, years after the death of Cain, and to pay taxes assessed on the ground, years after Cain's death, whilst no administration was 369] had on his estate. That no debts incurred by Joseph Cain, remained unpaid at the date when this ground was sold, nor when it was asked to be sold. That the children of Joseph Cain, deceased, were not parties to the proceedings and did not appear thereto, either by guardian, or in person, or otherwise. George Stringfellow went into possession, December 10th, 1869, under said deed, and remained in possession ever since, and that his possession, was that of a tenant in common with his brother Samuel. Samuel was not otherwise possessed.

That the price paid by said Stringfellow Brothers, was the full market value of said parcel of land at the time of their purchase.

That Groesbeck was never in possession, and showed no right thereto.

That after the death of Joseph Cain, the widow and the heirs of Joseph Cain, deceased, were the *bona fide* occupants of said east half of lot 6, block 69, and have retained actual possession thereof ever since, except as

herein otherwise specified; that they are and have been, from the death of said Cain, inhabitants of Salt Lake City, and are so now.

That they were the occupants of said east half of lot 6, block 69, within the statute, at the time of the entry of said lands by the mayor.

That the evidence does not show Brigham Young, William Jennings, Nicholas Groesbeck, or Samuel Stringfellow to have been inhabitants of Salt Lake City at the date of the entry of said land by the mayor, nor at any subsequent time, nor that they, or either of them, have any interest in the property or any part 370] thereof that would entitle them, or either of them, to the Government title through the mayor.

That the whole of said east half of lot 6, block 69, was held by Joseph Cain, deceased, and his family in his life-time, and by his widow and children after his death, as their homestead.

That after the death of Joseph Cain, deceased, the minor heirs of Cain resided with their mother, Elizabeth Cain, and continued to so reside until their majority, she having in the meantime become the polygamous wife of Samuel W. Richards.

Wherefore, by reason of the law and the findings aforesaid, the court make the following findings, of their conclusions of law: That neither Nicholas Groesbeck, George Stringfellow, Samuel Stringfellow, Brigham Young, nor William Jennings are entitled to any deed or title from the mayor for any of said half lot, but that each and every part of said east half of said lot 6 is the property of Elizabeth Cain, Joseph Cain, Elizabeth T. Crismon, heirs at law of Joseph Cain, deceased, and they are entitled to a deed therefor from the mayor of Salt Lake City.

July 6th, 1876.

M. SCHAEFFER,
Chief Justice.
JACOB S. BOREMAN,
Associate Justice

IN THE SUPREME COURT OF UTAH TERRITORY.

JUNE TERM, 1876.

APPEAL FROM THIRD DISTRICT COURT.

Boreman, Justice, delivered the opinion.

The contest in these proceedings is for the Government title to certain lands, under the "town-site" law of Congress. The mayor of Salt Lake City holds the title, in trust for the persons entitled thereto, under the provisions of the law. The various parties to these proceedings filed their claims with the probate court, asking title. The heirs of Joseph Cain, deceased, prayed for title to the whole of the east half of lot 6, block 69, plat A, Salt Lake City survey. The other parties claim fractional parts of said half lot. These claims being conflicting, the probate court considered all the claims together, and subdivided the half lot, amongst the parties filing on it. This subdivision not being satisfactory, an appeal was taken to the district court. In the district court a finding of facts was had, and judgment and decree accordingly. The Cain heirs, not being satisfied with the action of the district court, have brought the subject, by appeal, to this court; a motion for a new trial having been overruled. The main question involved is as to which of these claimants are "occupants," as contemplated by the "town-site" law. This statute was made 372] for the relief of the "inhabitants" of the towns and cities upon the public domain. It was made to secure to those "inhabitants" who are "occupants," the legal title according to their "respective interests." To give one a right to the conveyance of the Government title, it must appear that he is an "inhabitant" of the town, an occupant of the ground to which he seeks a title, and

has an "interest" in the property. The occupancy must be actual, individual occupancy, not an occupancy begun and held by agent merely.

If a person resided upon a parcel of ground, or carried on his business upon the ground, and claimed the whole of the parcel or lot, he might have title to the whole, unless some part be occupied by another person claiming right to the title. Then the question would arise, as to which exercised acts of ownership over the disputed ground first, and to what extent; and if that be settled, then was the claim ever abandoned or given up, and, if so, whose possession in good faith attached after the abandonment. We do not think that the law of Congress ever contemplated that a party should claim title to more lots or parcels than he actually, individually, occupied. Otherwise a person could gain title to an unlimited amount, by not occupying it himself, but by arranging with various agents, that they move upon the 373] lots and hold for him, and these agents to lay no claim to title, but let the employer claim all. The employer might thus gain title to the various parcels or lots, without ever being an occupant or an inhabitant, and could prove his right by simply showing, not his possession but possession by other men for him—he never having been individually in possession. Such a proceeding would be at war with the very object of the law, which was made for actual settlers, and not for speculators. A man having made *bona fide*, actual, individual, occupancy, either for his residence or his business, or in some way for his own use, he may no doubt afterwards sell his right of possession, his preference or right to Government title, but he must first have been an occupant in good faith himself, and the purchaser must take actual possession also and become an occupant.

There is nothing in the rule we lay down, which prohibits contracts, leases, or sales of such interests, but

they can only be made to or with "inhabitants" who can become occupants if the right of preference in obtaining title is to be affected. Such sales, leases, and other contracts are not discouraged or prohibited by the law, nor by the policy of the law. The Government only says, that if the contract be with one not an "inhabitant," and who does not become an occupant, such contract or sale will not be recognized in ascertaining to whom the title should be granted. A party in possession of any such city or town lot, will be presumed 374] to be so in possession, in his own right, and for his own use and benefit, until the contrary appears. And the possession of the ancestor when dying, is the possession of the heir, unless the contrary appears.

These are some of the principles which will control us in the examination of the merits and rights involved in the proceedings at bar.

When Salt Lake City was first settled, the place was laid out, or the laying out dictated by, Brigham Young, Willard Richards, and others, yet Brigham Young claimed to have "exclusive control" in making the settlement. Shortly after the first settlers came, and the town was laid out, certain parties, among whom was Willard Richards, were allowed to select portions of the city, each portion composed a number of lots or blocks, all in a body, in order to distribute the lots to those whom they desired to have near them. It appears that lot 6, block 69, was among the lots selected by Willard Richards under this arrangement. He turned the east half of the lot over to Joseph Cain, and marked the boundary between the east and west half; he gave Cain possession of a house situated on the north half of this east half, and he had the public records made to show that this east half was the property of Cain; and there is evidence going to show that Cain bought and paid for the half lot. Cain moved upon the lot and lived there until

375] his death. He exercised acts of ownership over the half lot, and it was assessed in his name and he paid taxes on the same until his death, and being so in possession the current of the evidence is, that he claimed the whole of the same to the boundaries of the half lot on every side, and that his possession and ownership of possession were recognized by Willard Richards and the public generally. The heirs of Willard Richards claim nothing now in this proceeding, not having appealed, but they have made two deeds for portions of the disputed part, one to Brigham Young and one to William Jennings, the effect of which will be considered hereafter.

At the death of Joseph Cain he was in the undisputed possession of all of said half lot, although Mrs. Ogden was living on the lot, but she claimed no ownership of the possession, and moved off shortly after Cain's death. The appellants claim that in the findings of fact by the district court there has been a failure to find that Brigham Young, William Jennings, Samuel Stringfellow, George Stringfellow, and Nicholas Groesbeck, or either of them, ever have been "inhabitants" of Salt Lake City or of Utah territory. The law, as we have stated, requires that the persons claiming, must, to entitle them to deeds, be "inhabitants." Inhabitancy was an essential fact, and should have been found. The appellants further claim that there was a failure to find that Young, Jennings, 376] the Stringfellows, or Groesbeck were in possession at the date of entry. The law requires that the parties, or perhaps those under whom they claim, should have been in possession at the date of the entry by the mayor. It was, therefore, an essential fact, and the failure to find thereon was error.

The appellants, the heirs of Joseph Cain, take exceptions to the findings of fact made by the district court, and allege that the material findings to which they object as erroneous, are as follows:—

1. It is found "that if said Joseph Cain ever occupied or claimed, the right of possession, of any portion of the north half of the east half of said lot, after he moved into the new house, his heirs and representatives soon after his decease surrendered and gave up such possession."

2. It is found "that portions of the south half of the east half of said lot, formerly in the possession of the heirs of Joseph Cain, "have been sold," and the possession delivered to the persons named in the judgment and decree of the court, with the particular description of the portion which each was in possession of, and entitled to."

3. It is found "that the north half of the east half of said lot has been subdivided, and the occupancy, possession, and right of possession have been in various persons; and that the persons named in the judgment and decree of the court are in possession, and entitled to the possession of the several particular descriptions of land given in connection with their names."

The first of these points, the alleged surrender of possession of the north half of the east half of said lot by the heirs of Joseph Cain, after Joseph Cain's death, we consider is well taken; for we are unable to discover 377] facts which would warrant the finding, certainly none so far as the children of Cain are concerned. They have never done anything that could indicate, that they gave up or surrendered, any rights which they have to such north half. The widow did not control this portion of the ground, although Joseph Cain had possession of it when he died. She said that Brigham Young claimed it, and she did not question his right; for in those days no one questioned what their leaders did; but, as she says, she would have taken the word of the leaders in those days as readily as she would "an angel." Such implicit confidence and faith in him were simply abused by Brigham Young, and he used it to take away from this widow and her infant children, property to which he did not have the shadow of a right.

The finding, therefore, of a surrender of said north half we deem erroneous.

The second of these material findings to which exception is taken has reference to a sale which it alleges took place, of portions of the south half, which had prior thereto been in possession of the heirs of Cain. One would naturally conclude from the reading of this finding that the heirs had sold such portions as are referred to, or at least were parties to some sale. Nothing of the kind appears, however, from the evidence. The parties referred to as having been the purchasers of parcels of said south half were Nicholas Groesbeck and the Stringfellow Brothers. Groesbeck's portion is very small, being only sixteen (16) inches, fronting on East Temple street, and running back (west) nine rods. Not a solitary witness was introduced to support Groesbeck's claim; nor any written or oral testimony, and there is an absolute want of any 378] evidence on the point, except an incidental reference thereto in Mrs. Cain's testimony, she saying that she sold a strip of, as she thought, that width to Mr. Groesbeck. Even then there is nothing in the evidence to show where these sixteen inches were or how long the strip was, or that she ever delivered the possession of it to Mr. Groesbeck, or whether Groesbeck ever was in possession; nor is there anything to show that any interest of the children was intended to be conveyed, nor indeed is there anything to show whether she sold as an individual or administratrix, or as guardian, although as it is mentioned in connection with the sale to the Stringfellow Brothers, it might be inferred to have been a sale as administratrix. But upon this inference we could not depend. There is, therefore, no proof to support Mr. Groesbeck's claim, and it must fall.

The Stringfellow Brothers have allotted to them, on the north of and adjoining the parcel allotted to Groesbeck, a parcel of ground, fronting on East Temple (Main)

street, sixteen feet and three inches; running back, west, eight rods, with the road privilege on the west. The road privilege was merely a written consent given by Richards and Elizabeth Cain, as individuals, and without consideration, and of course was subject to revocation at any time, even if S. W. Richards and Elizabeth Cain had the right to make it. The Stringfellow Brothers claim their parcel of ground (not including the roadway) under a sale and deed from S. W. Richards and Elizabeth Cain, administrators of Joseph Cain, deceased, made in pursuance of an order of the probate court, granting administration on the estate of Joseph Cain, deceased, which was 379] taken out more than ten years after his death. Such is the verbal proof, and there is no other kind of proof that any administration was ever taken out. S. W. Richards and Elizabeth Cain, claiming to be administrators, filed their petition in the probate court on November 4th, 1869, praying "for an order to sell real estate," upon the ground that the estate was, at that date, "involved in consequence of loaning money to erect buildings thereon, upon which interest is being paid, and also in consequence of taxes accumulating, while rents have been rapidly declining, by which the obligations and the expenses of the estate have to be maintained." There is no evidence that when administration was taken out any debts or other obligations of the deceased remained unpaid, but, on the contrary, the administrator, Richards, testifies that no such claims were ever presented to him, and that he believed they were all paid out of the personal effects of the deceased long before application was made to sell the real estate, and that the sale was made to raise money for the support of the family, to pay for improvements, taxes, &c., and that all this indebtedness accrued from three to ten years after Cain's death; and Mrs. Cain says that the sale was not made to pay debts incurred by Joseph Cain, deceased. What interest, then, passed by such sale and

the conveyance thereunder? The probate court is an inferior court, one of limited jurisdiction. It has no power not given to it by statute.

Our territorial statute (Utah Laws, 1852, page 41, section 16) says that personal and real property may both be sold upon the order of court, but it does not authorize the real estate to be sold except to pay debts, and then only 380] when the personal property is insufficient to pay the charges against the estate. These facts must appear affirmatively. The parties to this proceeding, and also the administrators, treated these possessory rights as real estate. The statute likewise treated them as real estate, for the statute speaks of real estate, and none existed if these rights be not such, for they were the highest interest that an individual could have to land when the statute was passed, and it is not to be presumed that the statute was not meant to apply to them, but only to something that did not then exist.

Whether they are strictly real estate or not, as understood at common law, we are inclined to hold that the laws of those early dates intended them to be treated as real estate. But whether we deem such possessory rights as real estate or as personal property, we are unable to see how such property could be sold under the law referred to concerning decedents' estates. If it was personal property it was not claimed to be of a "perishable nature," or likely to "depreciate in value." But it may be said that, although this property was not "perishable" or liable to "depreciate," and although no debts existing against the estate at the death of Joseph Cain, deceased, remain unpaid, yet that years after his death a large indebtedness was incurred against his estate. Who was authorized to incur such indebtedness? There was no administration. The property had descended to the heirs and could not be taken away from them by an administration, 381] unless debts incurred by Joseph Cain in his lifetime

remained unpaid. The guardian might incur debts for the support and education of the children, but this is not a case of that kind. Some unauthorized person years after Cain's death puts up improvements on the land of the heirs of Joseph Cain, and it is sought to pay therefor by taking out letters of administration and selling the property under the administration. That can not be right. And, further, the administrators had no authority whatever to pay debts and charges against the estate, even if in existence, until they were proven in manner prescribed by law, allowed by the court, and the administrator can not pay for the support of the widow and children except under the order of court. No debts were proved up and no allowance for support made. But really all these charges, including the taxes, were against the heirs, if against any one at all, and the administration had nothing to do with them. The sale, therefore, under which the Stringfellow Brothers claim, being unauthorized by law —the court having no power to make it—the sale and conveyance are null and void, and the parties take nothing by them. They are, therefore, upon the ground, if at all, wrongfully, and can only be treated as trespassers, and trespassers can have no rights as against the true and rightful claimants.

Next adjoining the "Stringfellow" ground lies that which was allotted to the Cain heirs, about which there 382] is no contest (except, perhaps, as to a small piece on the back part of the lot.) Adjoining on the north to the parcel allotted to the Cain heirs lies the "Ransohoff" property, as it is called. It is part of the south half of this east half lot, and was allotted by the district court to William Jennings, it being No. 51, with extension back. Jennings claims the ground under a chain of quitclaim deeds from Elizabeth Cain, through Charles King, Ransohoff, and Brigham Young to himself.

The quit-claim deed of Mrs. Cain purported to convey only her "right of claim, interest, and possession." Of

course such a deed conveyed no interest of the minor heirs, if they had any. Did they have any? The territorial statute says that if there be "other property" remaining it shall "descend in equal shares to his children," the widow taking a child's part during her life or widowhood. The interest which her deed therefore purported to convey was only equal to a child's part during her life or widowhood, and at her death or marriage it became the property of the two children. Under that statute therefore the children of Cain had valid and perfect right to the residue at the death or marriage of their mother. And we can see no reason why such a statute of descents is not valid. (Utah Laws, page 43, section 24.) It in no way affected the "primary disposal of the soil," it does not seem to be inconsistent with any law of Congress, and it is a proper subject of territorial legislation.

If, therefore, Jennings was in possession, it was only 383] as co-occupant with the heirs. His interest could only be that of the widow—one-third interest for the life or widowhood of Mrs. Cain. He can not by having possession of such an interest thereby obtain a right to oust the two heirs. He only becomes a co-occupant with the heirs—a possession in the nature of a tenancy in common. The courts are generally inclined to guard the interests of minors, and will not allow them to be deprived of any rights except under proceedings by proper suit to which they are parties. The conveyances set up as the foundation of Jennings' claim, recognize and support the rights of the children. They are a recognition of Joseph Cain's rights, and that is a recognition of theirs. But there is no evidence that Jennings ever went into possession of this property. Then, in saying to whom the Government title should go, his claim could not be recognized. If he had gone into possession under Mrs. Cain's title, he would have complied with the requirements of the United States statute, which is, that to

be recognized as being entitled to the Government title the party must be an "occupant," and this he was not, at any time. He can therefore have no right to any share in the property. If he has any remedy, it is against Mrs. Cain. He shows no right to a preference in the purchase of the Government title.

Let us look then at the third point, the exception to the finding respecting the north half of this east half lot, together with the strips or parcels claimed by Jennings across the whole west end of the east half lot. The first 384] allotment to William Jennings was No. 45, according to the plat, including its extension somewhat farther west than is indicated by the plat. In 1861, Brigham Young deeded "all of his right of claim, interest, and possession" in and to said parcel of ground to William Jennings. It nowhere appears that Young had any "right of claim," "interest," or "possession" to convey. He therefore could convey none. He himself says that whatever possession he might have had, was as trustee, in trust for the church, of which he is the head, and not as an individual. The church has made no conveyance and lays no claim to the lot, and files no declaratory statement therefor. The deed, therefore, from Young to Jennings is valueless, although there is testimony to show that Jennings intended to have Young make his title good. There is evidence that Jennings was at one time "in possession of and exercised acts of ownership" over the Eagle Emporium building, situated No. 45. But he was not in possession at Cain's death, and there is no evidence that he was in possession at the entry of the "town site" by the mayor. The character of his possession is not shown, it not being shown that he lived there or did business in such a building; nor does it appear that he held possession by consent of the heirs. If his possession was not by their consent, legally obtained, by proper action to which they were parties, they being

385] under age, their rights are in no way bound or affected by his possession. It is not claimed that any such suit was ever had. If, therefore, Jennings went into possession under authority given by Brigham Young in his deed, and depended upon Young's supposed power to compel a good title to the possession, from Cain's heirs, and Young has failed to be able to compel such title, Jennings can not make the heirs bear the consequences, but he must look to Young for his remedy. The heirs are not bound by any arrangement he and Young may have made. Jennings, therefore, being in possession at one time, was there wrongfully, and as a trespasser, and gained no rights which could be recognized in ascertaining to whom the legal title should be made. This finding and the allotment following to Jennings was, therefore, erroneous.

The last parcel allotted to Jennings is fifty-six feet north front, on First South street. The west twenty-six feet of this north front, running clear across the lot, are upon the west half of lot 6, and not contested, and therefor not to be disturbed by this court. The east sixteen feet of the remaining thirty feet of said allotment, is held under no deed, or any other kind of transfer or possession, and if Jennings be in possession it was, as in the last instance, as a trespasser as to the Cain heirs, no authority from said heirs ever having been obtained. The allotment of this sixteen feet front (and running south) 386] to Jennings was therefore erroneous. Now, respecting the fourteen feet, lying between the sixteen and twenty-six feet referred to, there is some doubt. Price seems to have been in possession in 1856–7 of forty feet north front, running across the lot. We hear no more of him until 1869, when he makes a deed to William Jennings of forty feet front and running across the lot, and the fourteen feet in question is embraced therein. In giving his testimony Price says, that he does not know

at what distance from the east line of the lot his ground was situated, and the great preponderance of testimony is, that Price's possession was on the west half of the lot and not on the east half. The simple fact that Price's deed fixes one hundred and fifty-one (151) feet as the distance from the east line of the lot, does not prove that the deed from Eddins to him gave the same description, or that Eddins put him in possession of the same, and the evidence shows that Eddins' ground was west of the centre of the lot, and we can not say that the statement in Price's deed should override the testimony of numerous witnesses, and the very actions of Dr. Richards himself, especially when Price himself does not seem to have been in possession for some twelve years before his deed was made. A deed is also shown in evidence from Willard Richards' heirs to Jennings, covering this fourteen feet. But that deed is subject to Jennings' filing, and, besides, we think that the evidence clearly shows, that the Richards' heirs had no rights or interests in such prop-
387] erty, or the possession to pass by such conveyance.

The deed, of course, is of no value so far as these fourteen feet are concerned. There is some evidence going to show Jennings' possession, although the evidence is very indefinite as to the precise ground possessed by him. His possession, however, was without authority and wrongful, and in no way can invalidate the rights of the heirs of Joseph Cain, deceased, when they have given no consent thereto, and it was subsequent to the death of Joseph Cain. The remaining portions of said findings, objected to as stated, refer to parcels allotted to Brigham Young by the district court, and numbered 47 and 49, with extensions back to the west. Brigham Young testifies that he never lived on any portion of lot 6, now in controversy. Yet he claimed to have had peaceable possession of portions of it for many years; not in his individual right, but as trustee, in trust

for the church of which he is the head. The church making no claim, his possession as trustee, if it ever existed, would effect nothing in the present proceedings, but he really never was in possession as contemplated by the statute. The fact that he sent Mrs. Ogden down to Joseph Cain, with direction to him to measure her off a piece for a house gave him no rights, as her occupancy was only temporary, and so intended; and he had never been in possession prior thereto. It was evidently only in exercise of that "exclusive control over the settlement" which he had claimed, but which gave him no right 388] in or to the real estate. It was a permission from Joseph Cain to Mrs. Ogden to use the ground for a time, and not a transfer of his right thereto. Jennings claims also under a deed from Willard Richards' heirs, made only a few days before the filing of his declaratory statement. He never had possession under that deed, and all of Willard Richards' right had been transferred to Joseph Cain in his life-time.

The fact that two women, Mrs. Braddock and Mrs. Franklin, who held the relation of polygamous wives to Willard Richards, resided a short while on the lot after it was transferred to Cain by Richards, does not show that Richards still claimed said lot. Such an inference would be very slight when compared with Richards' own positive acts, showing the contrary. The occupancy by these women was not Richards' occupancy. The law does not recognize the polygamous relation, and that is all that gives color to the idea that their possession was his possession. They laid no claim to the possession themselves, and removed at the request of Cain. Joseph Cain had lived in that house himself before these women were there, and used to rent it, and rented it after they removed.

There seems nothing in the evidence to warrant the belief that there remained in the heirs of Willard Richards

any, even the slightest, claim or right to any part of this half lot.

Brigham Young says in his testimony that he does not own parcel No. 47, but that it belongs to the co-
389] operative institution. His deed to Bassett and Roberts, shows that he conveyed to them all his interest in that parcel in 1865, and he says himself that it never was deeded back to him; yet he claims it. His claim has no foundation in justice. He was never an occupant of No. 47, nor of No. 49, within the meaning of the statute, and can have no rights therein. His claim was only such, as any one of a thousand men on the street might set up, and be able to maintain with as strong evidence as he has done. It is simply a claim for title, and that is all there is in it. He has shown no right to the title. It was, therefore, error to allow his claim.

The heirs of Joseph Cain, deceased, had possession of this whole half lot when Joseph Cain died, and they never gave up that possession, and they are not bound to submit, because being under age the control of the lot passed from them without their consent. They had until their majority to enforce their claims.

But there is another reason why none of the claimants, aside from the heirs of Joseph Cain, deceased, can possibly have any rights to any of this half lot: Joseph Cain died leaving that property, the whole half lot, in the possession of his wife and children as a homestead.

The territorial statute says "the homestead occupied by the wife, or any portion of the family of the deceased at the time of his death, shall in all cases be held free to the use of the wife and family of the deceased, and shall not be liable to any claim or claims against said estate." What authority did the probate court have to order the sale of it, even to pay debts, if any had existed? What
390] right did the widow have to sell any of it, or to give up possession to others as against the heirs? Certainly

none. It shall be held "free to the use of the wife and family," and she can not curtail this right in the heirs.

If she had no authority to sell even to pay debts, she certainly could not give the property away to the detriment of the minor children, which it is claimed that she virtually did, as to the north half. She says that Brigham Young claimed it and she submitted to his claim. That does not arise, however, to the dignity of a gift. It was only yielding to a claim, which she could not oppose or repel.

The courts can not recognize that any individual has the right to go upon property which has descended to infant heirs, and to hold such property because the heirs can not drive them off, and then to come into a court of equity and claim the title based upon his trespass. Such a trampling upon the rights of infant heirs, those who look with strongest claims to the courts for protection, can not be tolerated, but the rightful possessor and claimant, must be reinstated in his rights and given the legal title.

There seems, therefore, no valid reason why the heirs of Joseph Cain, deceased, should not have the title to the east half lot in question. Therefore, the judgment of the court below is reversed, and it is ordered and adjudged in this court, that the children and heirs of Joseph Cain, deceased, have the right to title in fee simple to the undivided two-thirds interest in said half lot; and that the widow has the right to title to one undivided third interest for life, or widowhood, with remainder in fee to the children and heirs; and it is ordered that the mayor convey accordingly. Schaeffer, C. J., concurs.

HISTORY OF THE CASE.

The city plot of Salt Lake City, as well as the large lots of five and ten acres, respectively, was laid out under the supervision of the church authorities (43 C.). In September, 1848, upon the arrival of the first emigrants

in Utah territory, a public meeting was held on the site of Salt Lake City. A plan of laying out the city was then adopted. Brigham Young, Orson Pratt, Willard Richards, John Taylor, Kimball and others appear to have had the disposal of the lots, which were formed by streets laid out by Brigham Young and his principal counsellors (55, 85, C.). At the same time one Bullock was chosen recorder and one Sherwood surveyor of the new town. The surveyor's duties were to lay off the city in lots and blocks, each block containing one and one-quarter acres; while the recorder was to keep a record of the lots, and note the names of the persons to whom theywere originally assigned (55, C.). The block and lots were numbered by the recorder, the numbers entered in a book formed of foolscap sheets stitched together, and the names of those to whom the lots were assigned were set opposite to the numbers. The persons then received certificates or tickets from the recorder upon payment of a small fee (55–6, C.).

Sometimes records of these tickets were omitted (43, C.). In the absence of legislation, occupancy was naturally the best sign of ownership. Disputes in this primitive society, which contained some three thousand souls (56, C.), were in those days unknown. All authority was derived directly from the people, who in public meeting delegated it from time to time to Brigham Young and his associates, known as the twelve apostles of the Church of Latter Day Saints (*ibid*). At first Brigham Young had exclusive control (85, C.). Shortly after the settlement, by common consent, other prominent members of the church were allowed to select the lots into which the city had been laid out, and they in turn distributed among their friends (86, 104, C.). Among those thus prominent in arranging the settlement of the city, besides the president of the church, Brigham Young, were Heber C. Kimball, John Taylor, and Willard

Richards (104, C.). All the lots in Salt Lake City were disposed of in this way under the supervision of the elders of the church, none of them being drawn by lot (43, C.). After the original distribution to the heads of the church, the lots were disposed of under the direction of Young, Kimball, and Richards. Richards appears to have had a number of these lots at his disposal, most of which he distributed among his friends (43, 55, C.).

The particular piece of ground in controversy is a *half lot*, the dimensions being ten rods by ten rods, containing about five-eighths of an acre (149). Early in 1849 the family of Lyman Hinman moved upon this lot as tenants of Dr. Willard Richards, bringing with them two small log houses belonging to Richards, which they erected together on the lot (145). Prior to the autumn of that year, they had built a small adobe house upon the same lot, which they occupied continually till October, 1850. The whole lot during that time was occupied by the Hinmans as tenants of Willard Richards (145). The whole of the half lot was plowed, and vegetables were raised on it during this time by the Hinmans (146, 148, 149). At this time the half lot in controversy was not separately fenced off, but there was a joint enclosure of nine blocks, around which was a fence, and part of this general fence formed the east boundary of the half lot (145). A block contains ten acres (148).

About August, 1851 (129), Joseph Cain, a clerk employed by Willard Richards in the printing office of the *Deseret News* (26, 33, 64–5, 142, 154, 209, 232), took possession of the adobe house just mentioned, and, with his family, occupied that house till 1852 or 1853 (Mrs. Cain's testimony, 135); probably, 1852* (149), when he

* E. T. Mumford testified (93) that the new house took some two years to build, and that it was begun in 1850 or 1851.

moved into another house on the same lot which he had built himself (133). Prior to the occupation by the Hinmans, viz., from November, 1848, the date of the original settlement, the ownership of the lot was claimed and acts of possession practised by Richards, (201). When the Hinmans left the lot in 1850, the only improvements on it were the log-houses brought there by Lyman Hinman, and the adobe house which he had built, and no other improvements were made till Cain built his house, which was erected on Nos. 53 and 55, (see Plan I., Probate Court distribution), and fronted upon East Temple street, standing a few feet back from the line of the street, (201). After Hinman had gone and until Cain came, (October, 1850, to August, 1851), the lot was under the control of Richards (149). The log-house of Hinman had been turned into a stable, and the adobe house, built by him, was used as a daguerreotype gallery (149). The position of these buildings is shown on the map (Plan III.). The adobe house, built by Hinman, being some twenty or thirty feet west of the east line of the lot, and not far from a line parallel to the north line of the log-house. The latter was in the north-east quarter of the half lot (145), and its west side was from a third to a half the length of the half lot west of the east side of the lot (151).

The testimony is conflicting in regard to the terms upon which Cain got from Richards the right to build his house on the half lot. The theories on the part of the Cain claimants are not easy to reconcile. Their original idea appears to have been to establish a *gift* of the half lot to Joseph Cain (who died in 1857; 131). He had originally occupied another lot further from Richard's residence, and at the doctor's urgent request he abandoned that and came to live on the present one. Doctor Richards had the distribution of various lots entrusted to him, including the one in question, not as

Richards (104, C.). All the lots in Salt Lake City were disposed of in this way under the supervision of the elders of the church, none of them being drawn by lot (43, C.). After the original distribution to the heads of the church, the lots were disposed of under the direction of Young, Kimball, and Richards. Richards appears to have had a number of these lots at his disposal, most of which he distributed among his friends (43, 55, C.).

The particular piece of ground in controversy is a *half lot*, the dimensions being ten rods by ten rods, containing about five-eighths of an acre (149). Early in 1849 the family of Lyman Hinman moved upon this lot as tenants of Dr. Willard Richards, bringing with them two small log houses belonging to Richards, which they erected together on the lot (145). Prior to the autumn of that year, they had built a small adobe house upon the same lot, which they occupied continually till October, 1850. The whole lot during that time was occupied by the Hinmans as tenants of Willard Richards (145). The whole of the half lot was plowed, and vegetables were raised on it during this time by the Hinmans (146, 148, 149). At this time the half lot in controversy was not separately fenced off, but there was a joint enclosure of nine blocks, around which was a fence, and part of this general fence formed the east boundary of the half lot (145). A block contains ten acres (148).

About August, 1851 (129), Joseph Cain, a clerk employed by Willard Richards in the printing office of the *Deseret News* (26, 33, 64–5, 142, 154, 209, 232), took possession of the adobe house just mentioned, and, with his family, occupied that house till 1852 or 1853 (Mrs. Cain's testimony, 135); probably, 1852* (149), when he

*E. T. Mumford testified (93) that the new house took some two years to build, and that it was begun in 1850 or 1851.

moved into another house on the same lot which he had built himself (133). Prior to the occupation by the Hinmans, viz., from November, 1848, the date of the original settlement, the ownership of the lot was claimed and acts of possession practised by Richards, (201). When the Hinmans left the lot in 1850, the only improvements on it were the log-houses brought there by Lyman Hinman, and the adobe house which he had built, and no other improvements were made till Cain built his house, which was erected on Nos. 53 and 55, (see Plan I., Probate Court distribution), and fronted upon East Temple street, standing a few feet back from the line of the street, (201). After Hinman had gone and until Cain came, (October, 1850, to August, 1851), the lot was under the control of Richards (149). The log-house of Hinman had been turned into a stable, and the adobe house, built by him, was used as a daguerreotype gallery (149). The position of these buildings is shown on the map (Plan III.). The adobe house, built by Hinman, being some twenty or thirty feet west of the east line of the lot, and not far from a line parallel to the north line of the log-house. The latter was in the north-east quarter of the half lot (145), and its west side was from a third to a half the length of the half lot west of the east side of the lot (151).

The testimony is conflicting in regard to the terms upon which Cain got from Richards the right to build his house on the half lot. The theories on the part of the Cain claimants are not easy to reconcile. Their original idea appears to have been to establish a *gift* of the half lot to Joseph Cain (who died in 1857; 131). He had originally occupied another lot further from Richard's residence, and at the doctor's urgent request he abandoned that and came to live on the present one. Doctor Richards had the distribution of various lots entrusted to him, including the one in question, not as

owner, but as one of the religious magistrates, for the benefit of the people, without compensation (24, 25, 26, 44, 51-2, 65, 87, C., 100, 101, 131, 134, 136). This idea was altered as the evidence progressed, and the more taking theory advanced, that Dr. Richards had *sold* the half lot to Cain, taking payment in some gold dust which the latter had brought from California. The theory of purchase rests solely on the evidence of the witness Bolwinkle (68-80, C.); for though Cain's widow testified (131) that Cain had said one day, "I am going to let the Doctor (Richards) have what money I brought with me" (from California), and that Richards had wanted to use money in making or improving a cañon road and mill (131); it was, she testified, long after this that the idea was formed by Cain of occupying the half lot in controversy, and this he agreed to do at Richards' earnest solicitation, so that he, Cain, might be nearer his work. And the idea that money passed for the lot is rebutted by Mrs. Cain's evidence (131) of her unwillingness to move on the lot, as well as that of other witnesses as to its valuelessness at that time (51, 54, 100, &c., C.). One other witness (Allen, 48) said that Cain had told him that "he had *loaned* Dr. Richards money, when he came back from California, and that the Doctor had turned him over the half lot in view of the money;" but the conversation was not evidence, for it was not made in Richards' presence, nor was it ever corroborated by Richards, nor were time, place, or circumstances stated by the witness (48). Nor was the lot at that *time of any

*Sophia Taylor, Cain's sister-in-law, testified (51, C.) that Richards promised to give Cain a lot if he would move up nearer him. "He wanted Joseph to move up near to his place of business, the post-office. Joseph being sickly, Dr. Willard Richards told him that if he would move up there he would give him a lot. My sister (Mrs. Cain) seemed to feel very bad about it, and objected to it very much. He (Joseph) told his wife that he would go and see the lot, and tried to pacify her. He went there

value (51, 54, 100, C.); nor apparently for many years afterwards, for the assessor and tax-collector in assessing Cain's property during his life-time seems to have assessed only the improvements on the half lot, considering the land of little, if any, value (29, 30, C.). The taxes assessed to him were paid by Cain for four years, 1854-7, inclusive (30, C.); but there is no evidence that any were paid by him or for his estate during any other years, except on Nos. 53 and 55, which were decided by the probate and district judge to belong to Cain's widow and heirs, and the title to which is not now in dispute.

Bollwinkle's testimony was to the effect that he had seen an entry on the books of the *Deseret News* (the book was not produced nor proper search shown, 70, C.), "By so many ounces of gold dust to W. R." (Willard Richards). The witness was unable to give either date or amount, but he stated that he knew this gold dust was

---

next day and came home about five o'clock. He said, "Lizzie, I have been looking at the lot." She asked him what kind of a lot it was. "He said it was full of gravel, and that they would not be able to raise any more vegetables. With that my sister sat down and cried, because he said they could not raise any more vegetables." On page 52 she says:—"I didn't like the looks of the place, it being a bare and rough-looking place. * * * There was nothing but a bed of gravel."

Elizabeth Whitaker testified (54 C.) that she had resided on the lot and that Cain had told her that the reason he did not fence it outside and plant it with trees, was because "it was too gravelly, and it wouldn't grow anything."

Vincent Shirtliffe testified (100, C.) that his lot was much more productive than Cain's. "He said he wished he had got a lot in some place more productive, as he could not raise much of anything on his."

T. D. Brown testified (26, C.) that Cain had told him that his lot had cost him $320 or $380; but, even if the statement were evidence, it does not appear whether it applied to a sum paid the original owner, or to money expended on it by Cain himself. Quite probably the latter; for though one witness (Howard Livingston, 91, C.) testified that Cain's new house had probably cost about $3000, he built it all himself, excepting some trifling carpenter's work, mason work, and whitewashing, the principal part of which he employed Peter Van Valkenburg to do for him at a cost of between $200 and $300 (80, C.).

credited on account of the half lot from a conversation he had heard between Cain and Richards, in which, speaking of the gold dust, Richards had asked Cain "if he had given himself credit for the gold dust he had let him have on account of the lot. Mr. Cain said that he had." This was the only conversation on the subject the witness gave (70, C.) except that on one occasion (whether the same or not does not appear) Cain asked Richards in the witness' hearing "how they were going to arrange about the amount to be allowed on that half lot. The Doctor (Richards) said for him to make out an account of all the gold dust that had been passed into the mint, that they could see how they stood, and then he said they could fix it. I could tell by their talk that they had some other transactions. I left them; that was all the conversation I heard. Mr. Cain afterwards made out an abstract of that gold-dust transaction, and started with it to the Doctor, and did not bring it back with him. He did not have it in his pocket" (71 C.). And on cross-examination the witness explains with some *naïveté* that he concluded that Richards had agreed to the account which Cain had furnished, because he did not see the paper on which the account was written in Cain's pocket when he returned from his visit to Richards (78, C.). Another fact renders the story extremely improbable. The conversation between Richards and Cain occurred in December, 1853, and the gold-dust account was made out by Cain a few days afterwards (Bollwinkle's testimony 78, C. On page 76 the witness says the conversation took place in October or November, 1873). The witness also testified that Cain at this conversation had spoken of the deed Richards was to make him, and that the latter had promised to make him the deed when he made some others (70, C.). According to Bollwinkle's testimony, therefore, the sale of the half lot was not completed till nearly the beginning of 1854,* while Bullock, the re-

*No deed was ever made by Richards to Cain.

corder, Cain's most important witness on this point, testified (57, 58, 62–3, C.) that Richards had ordered him to put down Cain's name as owner of this half lot in 1848 or 1849, more than four years before.

Whatever the arrangement between Richards and Cain really was, Cain did move on the lot in 1851, and completed his new house in 1852 or 1853. How much of the half lot he really occupied or claimed title to is doubtful. The preponderance of the evidence is in favor of a view which would substantially reconcile the testimony of the honest witnesses on both sides. Cain probably never claimed ownership over more of the lot than his new house and its enclosure actually occupied. The idea of claiming the whole lot seems to have originated between Mr. Joseph M. Cain, the son of Joseph Cain, and his attorneys, when many years afterwards it had become valuable by the growth of Salt Lake City, and the erection upon it by other people of valuable improvements.

Cain did not claim the whole half lot, or, if he did, his claim was not that of an owner whose title is not subordinate to the rights of others. It is true that he seems to have managed the lot from the time of Richards' death, March 11th, 1854 (159, 184, 200); but the weight of the evidence shows that this was as the administrator of Richards, and that Richards was always the reputed owner of the half lot, excepting the portions on which Cain had built his house.*

It is worthy of remark that though whole lots, not half lots, were usually distributed to the early settlers (58, C.), this was not the case with the lot in question. There is no doubt that the *west* half of the present lot was considered by Richards as his own property,

*(See 225–6; 214–6; 40, C.; 41, C.; 163; 170; 206; 210; 245–6; 154; 168; 173; 190; 193; 203; 235).

and when he came to convey the larger part of it on March 1st, 1853, he executed to Longstreth (as to dimensions of Longstreth's lot, see 207, and deed to Longstreth) a deed for it, reciting a consideration of $1000;* and the deed was acknowledged before Bullock, the recorder (180–1). Now it is not pretended that any *deed* was ever made to Cain by Richards. Bullock, Cain's most important witness as to the original title to the half lot, testified (57, C.) that Richards merely ordered him to put down Cain's name in the so-called Book of Promises; that no written conveyance passed between them. The improbability of Richards having ever given more than a right to occupy a portion of the half lot for buildings is rendered a substantial certainty by many concurring circumstances. Thus this very half lot had already been set down (by Bullock's admission, 59, C.) to one Blazzard, and no one ever paid for the recording of it (59, C.); and the title was so precarious that this very witness stated, in answer to a question as to what arrangement Richards made with Blazzard, to whom this lot had been originally put down, that (62, C.) "no arrangement was necessary. Dr. Richards just ordered me to put down the east half to Joseph Cain," adding, that after a lot had been once given out, those in authority frequently re-assigned it to some other person without the consent of him to whom it had first been given, giving an instance where this had been done (62, C.).

The half lot in controversy was always regarded by the Cains (if, indeed, Cain ever claimed the whole of it) as held at will. Thus Blazzard always retained a portion of this half lot, and exercised acts of ownership over it.* Bollwinkle testified (75, C.) that there was, in

* According to Bullock's testimony no money passed from Longstreth to Richards for the latter's half lot. It was an exchange of one tract for another (60–1, C.).

1857, a fence west of Eddins' strip running north and south, and dividing it from Blazzard's strip (see plan), and that Blazzard said this was his fence. The same witness testified (75, C.) that Eddins had a strip running back *i. e.*, south, ten rods; though he did not recollect its frontage, *i. e.*, on First South street.* The position of Eddins' strip is, however, exactly fixed by the evidence of other witnesses.†

* At a very early period that part of the lot west of a point one hundred and fifty-one feet west of East Temple street was occupied adversely to Cain. Eddins occupied a strip forty feet wide, east and west, obtained from Richards, running the whole way across the lot north and south. This strip adjoined Cain's strip, running at right angles to it. Blazzard had the next strip west, which Cain had conveyed to Riley, and Riley to him (202), also forty feet wide and the same length north and south. Longstreth had the remainder of the whole lot, viz., a piece ninety-nine feet east and west by one hundred and sixty-five feet north and south (207, 180-1, 201, 159). The dimensions and limitations of Longstreth's portion are shown exactly by the deed in evidence (181).

† Bollwinkle testified (75, C.) that Eddins lived on the ground west of Joseph Cain; that Richards had said in Cain's presence that he (Richards) had let Eddins have a building spot on the other (west) side of your line. This testimony is of the utmost importance, for it proves exactly to what point west of East Temple street Cain's line really ran, and it proves it by the testimony of a personal friend of Cain, an eager witness on the side of the Cain heirs, and in the most satisfactory way, for it shows that Cain knew exactly what he was getting. The question is, then, where was Eddins' east line, it being conceded that his strip ran north and south ten rods, or the whole breadth of the half lot? (75, C.)

The testimony is overwhelming. Mrs. Longstreth produced a deed (180–1), by which it appeared that Richards on the first of March, 1853, sold to her husband the west sixty rods of the whole of lot 6, *i. e.*, a tract of that lot ten rods north and south by six east and west. Six rods are ninety-nine feet, which was the frontage on First South street of the tract transferred to Longstreth (207). Eddins himself testified (160–1) to the same effect, and stated that "Riley owned the next forty feet east of Longstreth, and I owned the forty feet east of Riley" (161). These figures (99+40+40) place the east line of Eddins, whose strip adjoined the west line of Cain, 179 feet east of the west line of the whole lot, or (20 rods=330 feet—179 feet=) 151 feet west of the east line of the lot, that

is, of East Temple street. Eddins' testimony as to the situation on the lot of his 40 feet by 165 feet is corroborated by Heber, John Richards (202, 207), and by William Price (254–5), as well as by the deed from Price to Jennings (254–5).

Eddins testified (161) that Richards sold him the forty feet fronting on First South street, running back clear across the lot (except the breadth of a road running east and west along the south line.) He paid in work (168), and immediately took possession and occupied it from 1853 to May 1st, 1855. There was an adobe house on the extreme west line of Eddins' strip, the cellar of which was dug twenty feet from the north line of the half lot (161), thirty feet broad (167). Eddins also had an adobe stable, twelve feet square, on the south-west end of his strip. South of that was the wagon-road, already mentioned, about ten or twelve feet wide (161). While Eddins lived there neither Cain nor any one else claimed any right to it (162). In 1865 Eddins sold his strip to William Price (163, 255), gave a deed for it, which was recorded (255). Price exercised various acts of ownership, building fences, &c., in 1856, during Cain's lifetime. Cain knew of this, and offered no objection, nor did any of his heirs, till this suit was begun (255). Price's family occupied the strip till a short time prior to December, 1856, when he rented it to a tenant. Price had his strip surveyed to determine the line between himself and Blazzard on the west (256), and on April 7th, 1869, executed to William Jennings a conveyance for it, which was offered in evidence (254–5).

Jesse W. Fox, for twenty years the surveyor of Salt Lake City (245), testified that he surveyed a portion of the half lot at the instance and in the presence of Joseph Cain "*to the land* claimed by John Eddins." Joseph Cain directed him as to the boundaries of the tract surveyed. Eddins then lived on his strip, back of Cain's ground, and had built improvements on it (245). Cain never claimed, to the witness' knowledge, further west than to Eddins' strip. This was probably after Richards' death, in 1854. The survey was made, among other things, to establish the line between Cain and Eddins (246). By the survey it appears that Eddins' strip overlapped Cain's *by a few inches* (246, 248). There was a fence between Eddins' strip and Cain's tract, running north and south. The survey was made a year or two after Eddins had first occupied his strip (247.) *The east line of Eddins' strip was east of the centre of the half lot* (248). The survey was made to establish the line between the Eddins strip and Cain's and Richards' tracts. This witness measured off the strip for Eddins. (This was at a prior survey to the one made for Cain). *In making recent surveys the witness had ascertained, independently of his recollection, that Eddins' east line was fourteen feet east of the centre of the lot* (249). (This coincides with the position of Eddins' east line, as fixed by himself and other witnesses, and places Cain's west line 151 west of the line of East Temple street.)

Mrs. Richards (Cain's widow) testified (137–8, C.) that she had heard of no dispute as to boundaries between her husband and Eddins; that

During Richards' life-time Cain regarded his occupancy of the half lot as subject to the latter's orders. Thus we find two old ladies, called Mrs. Braddock and Mrs. Franklin, reputed to be the wives of Richards, living from 1852 to 1854, after Richards' death, in the little adobe house* built by Lyman Hinman, and occupied by Cain before he moved into his new house (53, C.; 73, C.; 134, C.; 136, C.; 141, C.; 152, 157, 161, 175–9, 180, 194, 200–3, 214–7, 219–21). Mrs. Braddock's daughter, Clementina Reed, cultivated a portion of the ground north and west of the little adobe house as a garden (194, 221, 224). Nannie Richards, sister of Mrs. Braddock, and a wife of

---

Price had succeeded Eddins in the occupation of the latter's strip during Cain's life-time. *She recollected no dispute as to boundary between herself and Price* (137, C.). Price always occupied the land west of a fence which formed the west boundary of an alley-way running north and south (118–138, C.). This fence was put up by Wells, Fargo & Co. Mrs. Cain never claimed possession west of that fence, and, indeed, supposed it to belong to Price (138, C.). This fence was put up in 1865 or 1866 (118, C.). It was standing at the time the testimony in this case was taken (October 10th, 1872), and Joseph M. Cain, the claimant, stated it (118, C.) to be "*one hundred and fifty feet west of the east line*" of the half lot 118). This fence "commenced on First South street, and ran clear across the lot" (north and south; Joseph M. Cain's testimony, 119, C.). He admitted (120–1, C.), they (the Cain heirs) had not continued in possession of any land west of this fence, and that the original north and south fence, which, he alleged, formed the true boundary of his father's lot, was removed before 1860 (120, C.). The same witness then states that the alleged encroachment was made while Price was owner, and that no remonstrance was made on his behalf or that of the other heirs. Immediately after Wells, Fargo & Co. had erected this fence (in 1865 or 1866) the premises west of it were used by the Overland Mail Company. The east line of Jennings' new building is about fourteen feet east of this fence (121, C.). Price was the reputed owner of the Eddins strip west of this fence. It was called the Price property, and the witness knew it, and he also knew that Price had sold the strip to Jennings (123, C.).

* W. P. Appleby said (99, C.) that the house occupied by these wives of Richards was a *log house*, but this is clearly a mistake. (See the pages cited, particularly Mrs. Eddins' testimony 197.)

Richards also, seems to have occupied the house both before and after his death (178). So did Augusta Clayton, a daughter of Mrs. Braddock's (194, 202), and Clementina Reed, her daughter (202, &c.). According to the testimony of the witness for the Richards' claimants, Cain, who was appointed his administrator (104, C.; 176; 162; 203); induced these ladies, after Richards' death, to leave the little house, telling them he could rent it advantageously; "that he thought it best to lease it for the benefit of the family, as it would almost support them" (176, 178–9, 194, 203, 214–7).

This same (Hinman) house was then rented by a whip-maker, named Daniel Shearer, who was called as a witness by both the Richards' and Cain claimants (172, 112). He occupied it from 1854 for two or three years, paying the rent to Cain; "and in paying rent to him, I understood he was acting for the estate of Willard Richards" (Shearer's testimony (72–3, C.). Shearer* rented a seat in his shop to two shoemakers, Snelgrove and Johnson (112, C.; 173), and their rent was often paid to Shearer in shoes made for the Richards family. Snelgrove's testimony (170-1) is to the same effect. He did work for the Richards family and received credit for it on his rent from Shearer. The general understanding was that the property belonged to Richards' estate, and that Cain managed it as administrator (171). William Haskinson, Shearer's partner, testified to the same effect (225). "It (the house)

*"Whenever there was a settlement between me and Mr. Snelgrove, the account for shoemaking done for Dr. Richards' family was allowed. When I made a settlement with brother Cain about the rent, he would always allow the account." (Shearer's testimony, 173.) This was done frequently during the whole time Shearer occupied the building, which was continued till a few days before Cain died. Shearer never heard Cain claim to own the building or ground on which it stood, and it was generally reputed to belong to Richards' estate while Shearer lived there (173).

belonged to the family of Willard Richards. This was the understanding we had. We got two shoemakers in afterwards, and Joseph Cain told us to let the family (Richards) have anything they wanted out of the shop, which saved us paying money." Cain said to witness one day, "There is a chance for you to buy this land, as the family want to sell it. He said he had been talking matters over with the doctor's family, and they were willing to sell it." (225-7.)

Before Cain moved into his new house, in 1852 or 1853 (190); before, indeed, Dr. Richards gave Eddins his strip of ground, (162) a small butcher shop, about twelve feet square, built of slabs (162), a little temporary shanty (191) had been run up close to the south line of the half lot, on the space described by some of the witnesses as the south roadway running east and west (162). Prior to the erection of this little shanty, a similar one a little further forward (*i. e.*, south) had been occupied for the same purpose by one Nathaniel Jones (191). The second one was occupied by one Topham. It was for temporary use (191), and of no value.*

As to who controlled this little shanty during the time it stood on the lot, the evidence is conflicting. Probably Richards had the control.†

---

* "There was never nothing permanent till after Willard's (Richards') death. I think the building was made of slabs, so that you wouldn't give five dollars for the whole thing when pulled down." (Robert Pixton's testimony, 153.)

†Heber John Richards testified (203) that Topham got permission to carry on his trade of butcher on the lot from Willard Richards, and that he paid his rent in butcher's meat supplied to the Richards family. "I was sent regularly every day for meat, which was charged on the rent." (203.)

Bollwinkle, however, says (73, C.) that Topham hired the ground on which the shop was erected of Cain, and that he and Cain collected the rent in meat.

W. W. Allen (48) states that Cain rented the shop to Topham, but gives no reasons for thinking so.

The only other improvements (if such a term be permissible) upon the half lot during Cain's life-time, and possessed by him, were "a cow-house, built of slabs and logs, which stood right west and north of the old house in which Mr. Cain first lived" (47, C. and see 66, C.), a pig-sty, privy, "all in a line right west of his house" (160); and some stables.

Lyman Hinman, it will be remembered, had moved two log-houses upon the lot in 1848, belonging to Richards, which he had occupied for some time, till the little adobe house was built (145; 149).

These log-cabins were used as a stable (98, C. 202) by Richards from the time Hinman left the log-house in 1850 for several years, while Cain lived on the half lot (160). This stable was considered to belong to Richards, who kept his teams there till he moved the log building on to another lot in 1852 or 1853 (169). Besides this stable, as to which it does not appear that Cain claimed any ownership, there were two others, one at the south-west corner of the strip occupied by Cain,* and the other on Eddins' ground, belonging to him.†

But Daniel Shearer, a witness called by both sides, swore (173) that while he lived in the (Hinman) above house, "a lady came and put up a little meat market right in front of the building, and according to my recollection now, I went to Joseph Cain to know why our front should be obstructed. *He told me his line did not quite reach the little building that we occupied,*" and the context shows clearly that Cain gave that as a reason why he did not have the little butcher shop removed (173).

This wooden shanty must not be confounded with the permanent butcher's shop put up by Jennings in 1868, on the corner of the lot (82, C.).

* This is doubtless the same log building as is mentioned by Kelly (36, C.).

† Eddins described (160) the Cain stable as "a few logs notched and put one on top of another, for a stable, situated on the west end of the piece of ground Joseph Cain occupied." This is probably the same building as that referred to by Hockings (37, 39, C.); if so, he is mistaken as to its material, which he says (39, C.) was adobe. He describes

Cain's stable was west of his house, and upon the strip assigned to him by the decree of the probate and district judges (See map).

Thus during Richards' life-time various portions of the half lot now claimed by the Cain heirs were occupied adversely to Cain, and, apparently, without objection by him. Not only were the tracts above described sold by Richards to Eddins, Riley, and Longstreth, respectively, but the strip immediately north of that assigned by the probate judge to the Cain heirs passed at an early period into the ownership of Brigham Young (90; 202). This property (*i. e.*, all of the half lot north of the ground occupied by Cain's house, viz., Nos. 51, 49, 47, and 45), was transferred to Brigham Young, as trustee, in trust for the church, at an early period to liquidate a debt

---

it as "one rod east of the west fence, and from one to three rods north of the alley" (39, C.); he may, however, confound it with Eddins' stable, which was built of adobe.

Bollwinkle describes (73, C., 75, C.), Cain's stable as built "of red pine logs towards the south-west corner of that half lot. It was put up by Asa Brown and myself in the fall of 1853, for Joseph Cain." The dimensions were 18 feet north and south, by 12 or 14 east and west (75, C.).

Eddins' stable must not be confounded with either of the foregoing. It was about twelve feet square, was built by Eddins, and occupied the south-west corner of his strip of ground adjoining, on the south, the east and west wagon road already described.

This road was about twelve feet wide, and had been retained by Richards when he sold Eddins his lot as an outlet upon east Temple street, for the benefit of those who owned, or might own, along the whole lot. It was intended to continue it as far west as Longstreth's tract, *i. e.*, to the extreme west of the lot (161).

Bollwinkle mentions this stable of Eddins. He says it was on the south end of Eddins' strip; but he does not recollect the wagon road between it and the next lot south. He thinks the stable stood at the extreme south of the lot, and that Eddins got at it from the north, from First South street, not from the east, from East Temple street (76, C.).

Mrs. Richards (Cain's widow) says, that when Cain moved on the half lot, there were two stables on it, one of which was near the north-west corner of the half lot (129, C.). This was doubtless the Hinman log house which was used by Richards as a stable and cattle-shed.

owed the church by Richards. If the trustee in trust was ever out of possession of the portion of the lot, he was reinstated at a very early date. It was held by Young, who said he had had peaceable possssion for many years, as trustee, until various portions were sold to different persons. These details are given below. Besides this possession as trustee in trust, founded on a debt owed by Richards to the church, Young, as an individual, obtained a conveyance of this part of the lot by a quit-claim deed from the Richards' heirs, for which he paid $14,000 (90; and see 224). By his permission, during Cain's life-time, a Mrs. Ogden was allowed to occupy, temporarily, a portion of the half lot north of Cain's house.* Mrs. Ogden occupied this portion, holding under Brigham Young, at the time of Cain's death, and for a considerable time after.†

---

* See map for the exact position of Mrs. Ogden's house. Mrs. Ogden lived in a small house on the half lot in 1854, during Cain's life-time therefore (23, C.; 40, C.; 82, C.; 67, C.); it was north of Cain's house, and south of the adobe house. Mrs. Taylor, Cain's sister-in-law and one of his witnesses, testified (51, C.), that Cain had "always *seemed* to occupy all of the half lot, until Mrs. Ogden came to live there and built her house. I thought it was all his until I asked what it meant about some one going to build there. *I said to him: I thought, Joseph, you owned all of this lot. He said that President Young had sent her (Mrs. Ogden) down to him to measure her off a building spot. He said if any other person than Brigham Young had requested it, he would not have done it. He seemed very much hurt in his feelings.*"

† Mrs. Ogden herself was called by the Cain heirs. She testified that she first saw Cain in 1854. She wanted to do business in Salt Lake City, and went to Brigham Young "and asked him if he would let me have a building place on that lot. He said he hardly thought he could spare it. I told him one rod in front was all I wanted, running back to Price's fence, supposed to be ten rods. He told me to go and tell Mr. Cain to measure me off a piece, and Mr. Cain measured me off one rod of ground. * * I supposed he (Brigham Young) owned it. I went to him supposing he had the power, if he desired to do so, to grant it to me and put me in possession. "She never claimed to own the land, which she supposed belonged to Young. She got the privilege of building a house for business (69, C.)." The house was built north of Cain's with room for

But Brigham Young's possession of the north five rods of the half lot is not controverted. Mrs. Richards, Cain's widow, one of the Cain claimants, the mother of the other two, testified that President Young had sent her husband word to measure off a portion of the half lot for Mrs. Ogden. "He was a man that done as he was told, and did not question anything that President Young or Dr. Richards done. I CONTROLLED FIVE RODS. * * * THE UNDERSTANDING WAS THAT THE PRESIDENT CONTROLLED THAT LOT, NORTH OF MRS. OGDEN'S." Mrs. Richards could assign no time as the beginning of this understanding. She moved with her whole family, in the spring, after her husband's death (1858), to the South, in consequence of the rumored approach of a detachment of United States troops. "*We were all individually subject to the will of our leader*, those of us who wished to live our religion. The President (Young) told Mrs. Ogden that she could have a piece there. * * *I got the idea that the five rods south of Mrs. Ogden's house was mine, and the other, the five rods north, was President Young's.* * * I would have taken the words of our leaders in those days as readily as I would an angel. President Young claimed

---

a wagon road between. She never paid rent, had no written lease; *never heard that Cain owned the ground*, and, when she left, moved part of her house away, and sold the rest to Brigham H. Young (68, C.), to whom Brigham Young had then conveyed this strip of the lot (89). Mrs. Ogden occupied the lot when Cain died (114, C.). Her house was then being built (according to Joseph M. Cain, 125, C.). He thinks she went on the lot in 1856, occupying the cellar of her house while it was being built. The house was not finished in 1858, when the Cain's left the lot and moved south (125, C.).

Mrs. Richards, Cain's widow, testified that after Cain's death, she only controlled the south five rods. "The understanding was that the President (Young), controlled the lot north of Mrs. Ogden's. * * The President told Mrs. Ogden that she could have a piece there. * * I got the idea that the five rods south of Mrs. Ogden's house was mine, and the other was President Young's."

it, and I never questioned it. No person in those days questioned our leader's transactions" (132, C). Mrs. Cain (Richards) left Salt Lake City in the spring of 1858, went south for two or three months, then returned, and remained some three months (1858). She then rented her part (the five south rods) of the lot and went away. She returned in five years (1863) and lived there four or five years more (1868), since which time she did not live on the half lot (137, C.). Mrs. Cain, a few years after her husband's death, married Samuel W. Richards, who, upon his marriage, by her authority acted as the guardian of the two other Cain claimants, Cain's son and daughter. Cain's children resided with their mother from the time of Cain's death (April 23d, 1857; 72, C.), including the period from November, 1869, to May, 1870 (253). Joseph M. Cain (Cain's son) was born May 14th, 1850, and Elizabeth T. Cain (Mrs. Crismon Cain's daughter), April 14th, 1848. These were Cain's only children, and with their mother made up the "Cain claimants." (114, C.)

Joseph M. Cain (his sister was not examined) also admitted that his family had not had possession of the north five rods of the half lot from his father's death, or shortly after. Mrs. Ogden was on the north five rods when his father died (117, C)., "and the north five rods went out of our possession soon after my father's death. * * Mrs. Ogden was there some time after my father's death." The part of the lot of which the Cains were in actual possession (and that as we have seen by a tenant, 137, C.) was Nos. 53 and 55 (118, C.). "There are two (three) pieces on the south five rods, which were sold by the administrator of my father's estate." (118, C.) "There were three pieces sold—one to Groesbeck of sixteen inches front, one to Stringfellow, the dimensions of which I do not know, and one to Charles Ring (King) of twenty-five feet east front, and I think eight rods back."

Q. You say the north five rods went out of your possession soon after your father's death; you mean by that five rods east by ten rods west, do you not?

A. Yes; *I mean all north of the north line* of the Ransohoff building (120, C.).

Even the west boundary fence, of which so much has been said, and which some of Cain's witnesses supposed, clearly under misapprehension, to divide the lot into two equal halves, was burnt down together with Cain's stables, by a tenant of Mrs. Cain, to whom she had rented the property in 1858, during the spring or summer of that year, (Mrs. Richards' (Cain) testimony, 130, C.). "He burnt my stables that Mr. Cain put up, and the slab fences and logs that were on the lot." (130, C.) Nor did she recollect that any other fence had been built to replace this one on the west. (133, C.).

Mrs. Cain (Richards) sold of the south five rods of the half lot three separate strips. "The first piece I sold Mr. King, now known as the Ransohoff property;" (for $2000; sold to Jennings for $20,000, Record 257). *It was sold in 1855 or 1856.* I sold a strip, I think, of sixteen inches to Mr. Groesbeck, not far from the time I sold the other piece, and I think for sixty dollars or seventy-five dollars. The next piece was to Stringfellow. I can't tell the amount of feet. The price received was, I think, $2500, but I am not sure. (138, C.). The King (Ransohoff), piece No. 51, was sold by King to Jennings, one of the present claimants. "I know Mr. Jennings bought, paid for, and owned the Ransohoff property." (Mrs. Cain's (Richard's) testimony, 139, C). Mrs. Cain further stated that she had no wish to reclaim any of the portion of the half lot which she had sold (to Groesback, Stringfellow, and King, Jennings); that she made the claim solely for her children; that she had been anxious to settle the matter, but that Joseph, her son, "got much riled in his feelings when he was informed

we did not own a foot of land," and would not consent to any arrangement. (140, C.; 141, C.) *

It but remains to tell accurately how the present claimants, appellants, became possessed of their respective properties on the half lot.

AWARDS MADE BY THE PROBATE AND DISTRICT COURTS.

STRINGFELLOW BROTHERS' STRIP.

The Stringfellows purchased their strip under an order of the Probate Court of Salt Lake County, directing Elizabeth Cain and Samuel W. Richards, administrators of the estate of Joseph Cain, deceased, to sell the same. The sale was made for $2500, was reported, together with the manner in which the proceeds had been expended, to the Probate Court, and the sale confirmed and approved. $2500 was the full market value at the time of sale (250, 251). Official copies of the petition for sale, the order of court directing the sale to be made, the report of the administrators that the sale had been made and of the distribution of the proceeds, the order of court confirming and approving the sale and the deed for the land to the Stringfellows are given on pages 258–61 of the record. George Stringfellow testified that he and his brother, Samuel Stringfellow, had been in

* "I don't want anything back that I have received pay for. There's no trouble about that on my part.

"Q. Then you don't want or expect to get the parcel of ground which you sold off that half lot?

"A. As far as I am individually concerned, I do not.

"Q. Why have you filed on it then?

"A. To protect those who are upon it." (141 C.)

possession of the strip described in their deed, offered in evidence, since the date of the purchase, December 10th, 1869, and that they were then (November 23d, 1872) in possession (254). They also offered in evidence letters of administration granted on the estate of Cain, granted to Elizabeth Cain and Samuel W. Richards, December 20th, 1867 (254).

THE CAIN HEIRS' STRIP.

Nos. 53-5 (see map II.) were awarded by the probate and district judges, as well as by the Supreme Court, to the Cain claimants, and the appeal has been taken from this decision. These lots comprised all the land which either Cain or his heirs ever had undisputed *possession* of—that on which was built Cain's new house. Thus Von Valkenburg testified (80 C.,) that Cain's new house fronted on East Temple street, "about sixteen feet back, and about twelve or fifteen, perhaps sixteen, feet from the south line of that half lot."

Appleby testified (96 C.) that the "centre of that house was some thirty feet from the south line of said lot, on portions of the building on "Exhibit B, numbered 53 and 55."

Robert Pixton, his neighbor on the adjoining lot on the south, testified (153) that "the south line of his house was what I always supposed to be, twenty (20) feet from the south line of that Emporium lot, having a road-way of twenty feet. * * * I should judge the house extended some thirty-five or forty feet north. It stood about twenty feet back from the east line of the lot."

Q. "State, if you know, what portion or extent of ground Mr. Cain occupied in addition to that on which the house stood and the space in front of the house, already mentioned.

A. "As far as the occupancy is concerned, the space back from the front of the lot runs about six or seven rods to a hollow, before mentioned. Never knew him to claim, or pretend to claim, any more in width of the lot than the width of the house, until after the death of Willard Richards.

Q. "Did he ever claim or occupy more of the lot than the ground mentioned? State whether or not Mr. Cain occupied any additional portion of the said lot than that you have just described, after the death of Dr. Richards?

A. "He made use of that road, but I supposed at the time it was for the benefit of the doctor's family, * * * but have no knowledge of him occupying any other portion of the lot."

John Eddins testified (164) that the south side of Cain's house was from fourteen to fifteen feet north of the south line of the half lot, and that south of the house was an alley-way which he (Eddins) frequently used. He also said (169) that he "never knew him (Cain) to occupy any (land) only what his house stood on and the yard back."

Mrs. Emma Bull testified (185) that she never knew Cain to occupy, for any purpose, any portion of the lot north of the north line of his dwelling, or claim any right to do so.

Heber John Richards testified (201) that Joseph Cain's strip "was forty feet on Main (East Temple) street, and, I think, about five rods back." On page 203, the same witness says, that Cain's outbuildings and other improvements were "immediately in rear of the house, close to it." Soon after Dr. Richards' death Cain claimed as his administrator, to control "*the south half only*, as he said, through permission of President Young." Cain gave the witness to understand that he took that portion of the south part of the half lot which he had not occupied at Richards' death by permission of Brigham Young.

Joseph Bull testified (233) that Cain had in effect admitted to him that he only owned up to the north line of his house. (For the distance back, occupied by Cain, see notes to page 45 of our brief.)

(The dimensions of his house are given on pages 36, 66, 74, and 80 of the record, testimony of Cain's witnesses.)

The award by the probate judge gave the Cain claimants all of the south half of the lot fronting on East Temple street which Cain's administrators had not sold for the benefit of his estate, viz., Nos. 53 and 55, from a point seventeen feet seven inches north of the south line of the lot to No. 51, a distance on East Temple street of thirty-nine feet eleven inches.

JENNINGS' STRIP.

Ransohoff, No. 51.

The Ransohoff strip is that shown on the maps as No. 51 (231), and formed the northernmost strip of the *south* five rods claimed by Mrs. Cain. Jennings claimed this strip through Mrs. Cain, who had sold it to Mr. King (231, 138, C.). King sold it to Ransohoff (231); Ransohoff to Brigham Young (86), and Brigham Young to the appellant, Jennings (139, 88, 231). The dimensions of the Ransohoff lot are twenty-five (25) feet north and south front by eight rods (132 feet) west (231). The Ransohoff strip was sold by Mrs. Cain in 1855 or 1856, and she gave a deed for it (138, C.). Brigham Young purchased the property from Ransohoff, paying him $18,000 or $20,000, and sold this property to the present owner, Jennings, for the same price (88). It is not pretended that Mrs. Cain was not paid a fair price. Mrs. Cain (139, C.), herself, testified that Jennings had "*bought, paid for, and owned the Ransohoff property.*'

On page 141 she stated further that she had no desire to get this land back, and had filed on it to protect those who were on it.

But not only was the property honestly bought and sold and a fair price paid for it by Jennings, but he was directly encouraged in his belief that he was the legal owner by the conduct of the Cain claimants. There was behind Nos. 53 and 55 (see maps I. and III.) a narrow alley-way, running north to the north line of No. 51 (behind No. 51, the "Ransohoff" lot, therefore), and south to the Groesbeck strip on the half lot (230, 121, C., 138, C.). Jennings supposed he owned the little rectangular bit of ground, sixteen by twenty-five feet (117, C.), directly behind No. 53, which formed the south-west corner of his portion of the half lot. He was erecting a large building on his portion of the lot, when he was told by Mrs. Cain, in September or October, 1871 (230, 139, C.), that the corner of his building was on the above-mentioned rectangle belonging to the Cains (230). The dimensions of the encroachment were stated by her to be sixteen feet, running east and west, by seventeen and a half feet, running north and south. Mrs. Cain told Jennings, as he testified (230), to go on with his building. Her daughter was present at the conversation. Mrs. Cain at the same time stated that her family claimed no property west of this alley-way (see map III.) or north of the Ransohoff property. Mrs. Cain herself testified (139, C.), when asked directly whether she had "not told persons that [she] owned no land west of that alley-way," that she did not know; that she could not recollect; that she was unable to say what she had and what she had not said in the matter. She admitted that Jennings had called on her in reference to the question of the encroachment on the small rectangle, and that nothing was said then about any further claim by the Cain heirs to any of the ground occupied by

Jennings (139, C.). Joseph M. Cain had come of age 140, C.), and the subject under discussion was left to him and Mrs. Cain's husband, Silas W. Richards. *She knew of no claim at that time by either of the latter that Jennings had encroached except on the small rectangle behind No. 51* (140, C.).

Joseph M. Cain came of age (114, C.) May 14th, 1871. He never notified Jennings that he or his family claimed any part of Jennings' property on the half lot till about a year and two or three weeks (122, C.; 117, C.) before the date of his testimony, October 3d, 1872, which would, therefore, be about September 12th, 1871, although Jennings' building was raised at least ten feet above the ground as early as June or July, 1871 (122, C.), and the west wall was perhaps higher (122, C.). Nor did he ever authorize any one to notify Jennings to that effect (122, C.), *although he had consulted counsel in reference to the matter several times; had been "instructed to keep quiet until he* [I] *became of age," and had never told any one but his attorney, Marshall, during the whole time the Wells-Fargo fence was on the half lot that he owned or claimed land west of it, in consequence of that legal advice* (123, C.). Nor had his mother or sister, according to Joseph M. Cain's admissions, ever pretended to claim any portion of the half lot west of that fence (123, C.) *prior to July 7th, 1872.* (For position of Wells-Fargo fence, see last part of note to page 45, on page 47.)

Jennings himself testified (230) that Joseph M. Cain had told him that the Cains claimed no land north of the Ransohoff line or west of the alley-way; that he (Cain) would confirm the title in Jennings to the Ransohoff property, for "his mother had sold it, and the (Cain) family were receiving the benefits." The only encroachment mentioned was that on the small rectangle behind No. 51, before mentioned (230). *This conversation was in September or October, 1871* (230), *and, therefore four*

months after Cain came of age. His sister was his senior by two years (114, C.).

Upon the Ransohoff property, belonging to Jennings, is now erected a building belonging to Jennings (88, 231), occupied by his tenant, Co-operative Institution, as tenants, which pays him rent for it (88). Brigham Young claimed this lot, in order to protect Jennings, his vendee, and convey to him the legal title (88), Jennings having paid Young eighteen or twenty thousand dollars for this No. 51 (88). Young had also bought from the Richards heirs their title to this lot, among others, for some fourteen thousand dollars (88, 224). Jennings did business on the half lot since 1854 (230). (See the conveyances, Record 256–7; "1st," " 2d," " 3d," and "4th.")

BRIGHAM YOUNG'S

Strips, Nos. 49 and 47.

Brigham Young was, at the time this suit was begun, the owner of Nos. 49 and 47 (89). We have already seen (*ante*, 51) how this portion of the *north five rods* had been turned over to Brigham Young as trustee in trust (89) for a debt owing by Richards, and how, subsequently, the Richards heirs confirmed Young's title on payment by him to them of $14,000 (90, 224). Young's possession extended from the north line of the half lot to Cain's house, on No. 51 (90). The possession of the trustee in trust included Nos. 49 and 47, and if he was ever out of possession of those lots, he was reinstated at an early time (89). The Cains never claimed this property till shortly before Young's testimony was taken in September, 1872 (89). Indeed, both Mrs. Cain and Joseph M. Cain admit that shortly after Cain's death, in 1857, the *north five rods* of the half lot, including Nos. 49 and 47, passed out of (if

it had ever been in) their control (132, C., 120, C.). Young was at the time suit was brought in actual possession of No. 49, through his tenant, the Co-operative Drug Store, which paid him rent for it (89). He had repurchased the land in April, 1867, from his son, B. H. Young, to whom he had sold it (89). By reference to the map III., it will be seen that it was upon this very No. 49 that Mrs. Ogden, by Brigham Young's permission, had built her house during Cain's life-time, and it was to B. H. Young, who then owned it, that, in moving away, she had sold the materials of her house (68, C.).

The building on No. 47 was occupied when suit was began by the Co-operative Institution (89). The building was known as the Co-operative Drug Store (27, C.). Brigham Young conveyed this lot, on April 10th, 1865, to Bassett and Roberts (89, 27, C.), who built the store upon it (27, C.). They sold it in 1868 or 1869 to the Co-operative Institution, the deed being made to one Clawson (28, C., 89). Brigham Young was the president of the Co-operative Institution (88), which continued the owner when suit was brought. Brigham Young's claim to No. 47 was made on behalf of this company, the real owner, and to protect Bassett and Richards (89, 29, C.), whose claims in this suit are to be treated as identical. The same general remarks (*q. v.*), already made with reference to No. 49, as to estoppel, absence of possession and ownership, &c., apply to No. 47. See the conveyances (Record, 257–8, "1st," "2d," "3d,") to the Zion Co-operative Institution, the present owner of No. 47, for whom Young claimed title.

JENNINGS' STRIP.

Eagle Emporium, No. 45.

Besides No. 51 (Ransohoff), Jennings had purchased from Brigham Young No. 45, the north-east corner of

the half lot, known as the Eagle Emporium. This lot ran back 135 feet (231). Jennings had owned, occupied and exercised ownership over, this corner lot from as early as 1864, during the whole time of the ownership by Bassett and Roberts of No. 47, the Co-operative Drug Store (28, C.). As early as 1858 Jennings had built a butcher's shop on this lot (82, C.), but probably as tenant, for the corner was only conveyed to him in 1861 by Brigham Young, who received a proper consideration for it (88). Jennings had been in possession ever since, either by actual occupation, or through that of his tenant, the Co-operative Company, of which Brigham Young was president, and which company paid Jennings rent for the building, (88). It is not pretended that Jennings has ever been out of possession of this corner, or that the Cains have ever occupied it in any way since Cain's death, in 1857, if, indeed, he ever did before that time. The same general remarks (*q. v.*) already made, with reference to No. 49, as to estoppel, absence of possession, and ownership apply to No. 45. (See the conveyance, Record, 258).

JENNINGS' BACK STRIPS.

Besides Nos. 45 and 51, Jennings was the owner (231) of two narrow strips upon the half lot running north and south behind those lots. The first of these was sixteen feet in width east and west by one hundred and seven and a half feet north and south, and formed a portion of the second allotment to him by the probate judge (record 2). He purchased this strip of Brigham Young, and held two conveyances for it (of which abstracts are given on page 257 of the record, "5th" and "6th"). These conveyances were dated April 15th, 1861, and August 1st, 1869, and were for the respective considerations of $1800 and $1000. The last conveyance was for the first

above-mentioned strip in terms. The first included it as well as the second or Eddins' strip, of which the dimensions were forty feet east and west by ten rods, or one hundred and sixty-five feet north and south. The strips adjoined each other, lay immediately west of the Eagle Emporium (No. 45), and fronted on First South street. The first was a part of the *north five rods*, which passed into Brigham Young's hands, according to Mrs. Cain's testimony (132, C.), shortly after her husband's death, in 1857. The second was the Eddins strip, to which it seems Young claimed title, and as to this, Jennings held both Young's and Eddins' title (255, 257, "5th" and "7th" abstracts of conveyances by Young and Price to Jennings; and see notes, *ante*, 45).

It is not pretended that the Cains occupied either of these strips after 1857. The evidence is conclusive that the large, or Eddins', strip of forty feet front was never occupied, or even claimed by Cain (*ante*, notes, 45). The same general remarks as were made in reference to No. 49 and the other portions of the *north five rods* apply to the smaller or east strip of sixteen feet front. Jennings' *new building* occupied the north-west corner of the half lot, *i. e.*, the portion immediately behind Nos. 45, 47, 49, and 51, that is to say, the two strips just described. It was the extension of this *new building* to the south-east that the *encroachment* upon the little Cain rectangle, behind No. 51, occurred. (See conveyances of these strips, Record, 255, 257, "5th" and "7th.")

☞ Particular attention is called to the abstracts of conveyances to Jennings, upon pages 256–7–8 of the record, which give, with exactness, the various portions of the half lot claimed by him, together with the dates when he purchased them and the considerations he paid for them.

witnesses, testify that this fence was destroyed before the year 1860, and a new fence, called the Wells & Fargo fence, was built at a distance of *twelve or thirteen feet east of the old fence*, and became the partition line between the Cains and Price, the occupant of the west half of lot 6, without complaint or opposition on the part of the former, for many years. In view of these facts, brought out in the testimony of the Cain heirs, themselves, and in view of the direct testimony of several witnesses of the Richards heirs as to the situation of the fence at a distance of only about nine rods west of East Temple street (186, 248), it would seem to be proved that the Wells & Fargo fence was constructed substantially upon the site of the old west fence, a proof which approaches a demonstration when we consider the location of the Eddins' strip (page 45 of this brief), and find that during his occupation, all admit this west fence passed east of his house, and that in order to do this it must have been a full rod east of the middle line, for Eddins' house itself was east of that line, and his forty-feet-wide strip extended sixteen feet east of it. (See plan III.)

In addition to these boundary fences, Parker (23, C.), one of Cain's witnesses, and Horn (243, C.), both testify (and their testimony is uncontradicted save by the merest denial of recollection) that when Cain moved into his new house, a partition fence, running from a point a rod west of East Temple street, and extending westward six or seven rods, divided the new house from Mrs. Ogden's house (see plan III.). This important fact clearly shows that Cain never occupied more than the south five rods of the half lot, and throws much light upon the remark of Mrs. Cain (132, C.), "I got the idea that the five rods south of Mrs. Ogden's house was mine and the other was President Young's."

I. ASSIGNMENT OF ERRORS.

In the Supreme Court of the United States.

IN THE MATTER OF THE SEVERAL APPLICATIONS OF ELIZABETH CAIN, JOSEPH M. CAIN, ELIZABETH T. CRISMON, CHARLES CRISMON, Jr., HEIRS OF JOSEPH CAIN, DECEASED; AND NICHOLAS GROESBECK, BRIGHAM YOUNG, WILLIAM JENNINGS, SAMUEL STRINGFELLOW, GEORGE STRINGFELLOW, FOR DEEDS FROM THE MAYOR OF SALT LAKE CITY FOR PARTS OF LOT 6, BLOCK 69, PLAT A, SALT LAKE CITY SURVEY.

The said Samuel Stringfellow and George Stringfellow, appellants, by G. E. Whitney, Esq., their attorney, come now and, not waiving their right to make hereafter a further assignment of error, say that there is manifest error in the record and proceedings of the Supreme Court of the Territory of Utah herein, in this, viz.:—

1st. The said court erred in reversing the judgment and decree of the third district court of said territory.

2d. That the said supreme court erred in proceeding to a trial of said application, and in not remanding the same to the said district court upon a reversal of a decree thereof.

3d. That the said supreme court erred in entering a decree in favor of the said Joseph M. Cain, Elizabeth T. Crismon, and Elizabeth Cain, directing a deed to be issued to them for the portion of said lot which was awarded to these appellants by the said district court.

4th. That the said supreme court erred in rendering its decree against these appellants for the portion of said lot claimed by them upon the facts found by said

supreme court, for the reason that the said findings of fact do not support the said decree.

5th. That the said supreme court erred in decreeing that the mayor of Salt Lake City execute and deliver to the said Elizabeth Cain a deed of the undivided one-third of the lot claimed by these appellants for her life, or until she shall marry, remainder to the said Joseph M. Cain and Elizabeth T. Crismon.

Wherefore, these appellants pray that the judgment and decree of the said Supreme Court of the Territory of Utah be reversed, and that a mandate issue from this court directing the said Supreme Court of the Territory of Utah to affirm the judgment and decree of said district court, or for such other mandate or direction as shall be in accordance with the law and facts unto which these appellants may be entitled.

GEORGE E. WHITNEY,
Attorney and of Counsel for George and Samuel Stringfellow, Appellants.

(Endorsed—Supreme Court of the United States. In the matter of the application of Joseph M. Cain and others, &c. Assignment of errors of George and Samuel Stringfellow.)

—

IN THE MATTER OF THE SEVERAL APPLICATIONS OF ELIZABETH CAIN, JOSEPH M. CAIN, ELIZABETH T. CRISMON, AND CHARLES CRISMON, JR., HEIRS OF JOSEPH CAIN, DECEASED; AND N. GROESBECK, BRIGHAM YOUNG, WILLIAM JENNINGS, SAMUEL AND GEORGE STRINGFELLOW, FOR DEEDS FROM THE MAYOR OF SALT LAKE CITY FOR PARTS OF LOT 6, BLOCK 69, PLAT A, SALT LAKE CITY SURVEY.

The said William Jennings, the appellant in the above matter, comes now, by George E. Whitney and Williams

& Young, his counsel therein, and says there is manifest error in the record and proceedings of the Supreme Court of the Territory of Utah, in this, viz. :—

1st. The said court erred in reversing the judgment and the decree of the District Court of the Third Judicial District of said territory.

2d. The said court erred in proceeding to a trial of the said matter, and in not remanding the same to the said district court for a new trial upon the reversal of the decree thereof.

3d. The said court erred in rendering and entering its decree in favor of the said appellees, Joseph M. Cain, Elizabeth T. Crismon, and Elizabeth Cain, for the title of the portion of the land in controversy which was awarded to the appellant, William Jennings, by the said district court.

4th. The said court erred in rendering its decree in favor of the said appellees upon the facts found, for the reason that the said findings of fact do not support the said decree.

5th. The said court erred in decreeing that the mayor of Salt Lake City execute and deliver to the said Elizabeth Cain a deed of the undivided one-third of the land in controversy for her life, or until she shall marry, remainder to the said Joseph M. Cain and Elizabeth T. Crismon.

6th. The said court erred in making its findings of facts, for the reason that the evidence adduced does not support the same.

Wherefore, the said appellant prays that the judgment and decree of the said Supreme Court of the Territory of Utah may be reversed, and that a mandate may issue

from this court, directing the said supreme court of the said territory to affirm the judgment and decree of the said district court.

We have, and hereby do reserve the right to add to, alter, or amend these assignments of error, in our briefs, prior to the argument of this case.

WILLIAMS & YOUNG,
Attorneys and Counsel for Appellants.
GEORGE E. WHITNEY,
Of Counsel.

TERRITORY OF UTAH, }
COUNTY OF SALT LAKE, } *ss.*

I, E. T. Sprague, clerk of the Supreme Court for the Territory of Utah, hereby certify that the foregoing is a true, full, and correct copy of an assignment of errors in said cause on file in my office.

In Witness Whereof, I hereunto set my hand and the seal of said court this twenty-sixth day of September, 1876.

[SEAL] E. T. SPRAGUE,
Clerk Supreme Court.

(Endorsed—In the Supreme Court of the U. S. Brigham Young *et al. vs.* Joseph M. Cain *et al.* Assignment of errors. Copy.)

—

417] IN THE MATTER OF THE SEVERAL APPLICATIONS OF ELIZABETH CAIN, JOSEPH M. CAIN, ELIZABETH T. CRISMON, AND CHARLES CRISMON, JR., HEIRS OF JOSEPH CAIN, DECEASED; AND N. GROESBECK, BRIGHAM YOUNG, WILLIAM JENNINGS, SAMUEL AND GEORGE STRINGFELLOW FOR DEEDS FROM THE MAYOR OF SALT LAKE CITY, FOR PARTS OF LOT 6, BLOCK 69, PLAT A, SALT LAKE CITY SURVEY.

The said Brigham Young, the appellant in the above matter, comes now, by George E. Whitney and Williams

& Young, his counsel therein, and says there is manifest error in the record and proceedings of the Supreme Court of the Territory of Utah herein, in this, viz. :—

1st. The said court erred in reversing the judgment and decree of the district court of the third judicial district of said territory.

2d. The said court erred in proceeding to a trial of the said matter, and in not remanding the same to the said district court for a new trial, upon the reversal of the decree thereof.

3d. The said court erred in rendering and entering its 418] decree in favor of the said appellees, Joseph M. Cain, Elizabeth T. Crismon, and Elizabeth Cain, for the title of the portion of the land in controversy, which was awarded to the appellant, Brigham Young, by said district court.

4th. The said court erred in rendering its decree in favor of the said appellees upon the facts found, for the reason that the said findings of fact do not support the said decree.

5th. The said court erred in decreeing that the mayor of Salt Lake City execute and deliver to the said Elizabeth Cain a deed of the undivided one-third of the land in controversy for her life or until she shall marry, remainder to the said Joseph M. Cain and Elizabeth T. Crismon.

6th. The said court erred in making its findings of fact, for the reason that the evidence adduced does not support the same.

Wherefore, the said appellant prays that the judgment and decree of the said Supreme Court of the Territory of

Utah may be reversed, and that a mandate may issue from this court directing the said supreme court of [419] the said territory to affirm the judgment and decree of the said district court.

We have, and hereby do reserve, the right to add to, alter, or amend the within assignment of errors, or make new ones, in our briefs, prior to the argument of this case.

WILLIAMS & YOUNG,
Attorneys and Counsel for Appellants.
GEO. E. WHITNEY,
Of Counsel.

—

II. ADDITIONAL ASSIGNMENT OF ERRORS ON BEHALF OF ALL THE APPELLANTS AND PLAINTIFFS IN ERROR.

1. The Supreme Court of the Territory of Utah erred in decreeing that Elizabeth Cain, Joseph M. Cain, and Elizabeth T. Crismon, the wife of Charles Crismon, were, at the date of the entry of Salt Lake City by the mayor, the rightful occupants of the east half of lot 6, block 69, plat A, Salt Lake City survey (record, 282).

2. In decreeing that the said Joseph M. Cain and Elizabeth Crismon were entitled to a deed in fee simple from the mayor of Salt Lake City, Utah territory, for the undivided two-thirds of the east half of lot 6, block 69, plat A, Salt Lake City survey, and that the said Elizabeth Cain was entitled to a deed from the said mayor for an estate in the undivided one-third of said property during her life, or until she should marry, with remainder to Joseph M. Cain and Elizabeth T. Crismon (record, 282).

3. In decreeing that the mayor of said city should execute and deliver to the said Joseph M. Cain and Elizabeth T. Crismon and to the said Elizabeth Cain deeds as aforesaid (record, 282).

4. In decreeing that the appellants in the case below, Elizabeth Cain, Joseph M. Cain, and Elizabeth T. Crismon, should recover of the respondents, the present appellants, the costs in the case in the court below (record, 282).

5. In finding as a fact that Joseph Cain was given the possession of the entire eastern half of said lot 6, block 69, by Willard Richards, and that Cain built his house under the said alleged arrangement with Richards (record, 283–6).

6. In finding as a fact that the half lot alleged to have been occupied by Joseph Cain and his family constituted their homestead. (*Ibid.*)

7. In finding as a fact that during his life-time Joseph Cain exercised acts of ownership over the whole of said half lot, and claimed the ownership of the right of possession to the outside boundaries of the said half lot on every side. (*Ibid.*)

8. In finding as a fact that the alleged right of the said Joseph Cain to the whole half lot was recognized by the public generally and by Willard Richards in particular. (*Ibid.*)

9. In finding as a fact that Joseph Cain never in his life-time surrendered his rights or gave up his possession to any part of the said east half of his lot. (*Ibid.*)

10. In finding as a fact that Elizabeth Cain, the widow of Joseph Cain, did not admit the right, though

Utah may be reversed, and that a mandate may issue from this court directing the said supreme court of [419] the said territory to affirm the judgment and decree of the said district court.

We have, and hereby do reserve, the right to add to, alter, or amend the within assignment of errors, or make new ones, in our briefs, prior to the argument of this case.

WILLIAMS & YOUNG,
Attorneys and Counsel for Appellants.
GEO. E. WHITNEY,
Of Counsel.

—

II. ADDITIONAL ASSIGNMENT OF ERRORS ON BEHALF OF ALL THE APPELLANTS AND PLAINTIFFS IN ERROR.

1. The Supreme Court of the Territory of Utah erred in decreeing that Elizabeth Cain, Joseph M. Cain, and Elizabeth T. Crismon, the wife of Charles Crismon, were, at the date of the entry of Salt Lake City by the mayor, the rightful occupants of the east half of lot 6, block 69, plat A, Salt Lake City survey (record, 282).

2. In decreeing that the said Joseph M. Cain and Elizabeth Crismon were entitled to a deed in fee simple from the mayor of Salt Lake City, Utah territory, for the undivided two-thirds of the east half of lot 6, block 69, plat A, Salt Lake City survey, and that the said Elizabeth Cain was entitled to a deed from the said mayor for an estate in the undivided one-third of said property during her life, or until she should marry, with remainder to Joseph M. Cain and Elizabeth T. Crismon (record, 282).

3. In decreeing that the mayor of said city should execute and deliver to the said Joseph M. Cain and Elizabeth T. Crismon and to the said Elizabeth Cain deeds as aforesaid (record, 282).

4. In decreeing that the appellants in the case below, Elizabeth Cain, Joseph M. Cain, and Elizabeth T. Crismon, should recover of the respondents, the present appellants, the costs in the case in the court below (record, 282).

5. In finding as a fact that Joseph Cain was given the possession of the entire eastern half of said lot 6, block 69, by Willard Richards, and that Cain built his house under the said alleged arrangement with Richards (record, 283–6).

6. In finding as a fact that the half lot alleged to have been occupied by Joseph Cain and his family constituted their homestead. (*Ibid.*)

7. In finding as a fact that during his life-time Joseph Cain exercised acts of ownership over the whole of said half lot, and claimed the ownership of the right of possession to the outside boundaries of the said half lot on every side. (*Ibid.*)

8. In finding as a fact that the alleged right of the said Joseph Cain to the whole half lot was recognized by the public generally and by Willard Richards in particular. (*Ibid.*)

9. In finding as a fact that Joseph Cain never in his life-time surrendered his rights or gave up his possession to any part of the said east half of his lot. (*Ibid.*)

10. In finding as a fact that Elizabeth Cain, the widow of Joseph Cain, did not admit the right, though

submitting thereto, of Brigham Young to the north half of the said east half lot. (*Ibid.*)

11. In finding as a fact that Brigham Young was not an occupant of any part of the said half lot at any time or entitled to the same. (*Ibid.*)

12. In finding as a fact that the evidence in the case did not show that Jennings went into possession of the Ransohoff (No. 51) strip of ground of the half lot, and that the evidence did not show that Jennings was ever an occupant thereof. (*Ibid.*)

13. In finding as a fact that the precise time and extent of Jennings' occupation of No. 45, with extension south, did not appear, and in finding that Brigham Young, under whose deed Jennings claimed the said No. 45, had never been in possession or had any interest in the property. (*Ibid.*)

14. In finding as a fact, that the precise portion of the half lot, of which William Price had been in possession, did not appear in the testimony. (*Ibid.*)

15. In finding as a fact, that the preponderance of testimony in the case was, that neither Price nor any of those under whom he claimed was ever in possession of any ground east of the centre of the lot, or entitled, at any time, to the occupancy of any part thereof. (*Ibid.*)

16. In finding as a fact, that the possession of Jennings, of the back strips of the half lot, upon which his new building was being erected, was indefinite as to time and character; and that Jennings did not appear to have been an occupant of those portions of the half lot at the date of the entry of the land by the mayor of Salt Lake City. (*Ibid.*)

17. In finding as a fact, that Brigham Young had never had possession at any time of the east sixteen feet of the fifty-six feet of the back strip claimed by Jennings, and that the said Young had never at any time occupied any part of the said half lot which was allotted to him by the district court. (*Ibid.*)

18. In finding as a fact, that Brigham Young was never in possession of number 47 or number 49, the two parcels of the half lot awarded him by the district court. (*Ibid.*)

19. In finding as a fact, that Brigham Young had no interest in said property, or either parcel thereof (numbers 47 and 49). (*Ibid.*)

20. In finding as a fact, that the sale to the Stringfellow Brothers was made to pay for improvements put on the ground years after the death of Cain, and to pay taxes assessed upon the ground years after Cain's death, whilst no administration was had on his estate. (*Ibid.*)

21. In finding as a fact, that no debts had been incurred by Joseph Cain remaining unpaid at the date when the ground was sold to the Stringfellows, or when it was asked to be sold. (*Ibid.*)

22. In finding as a fact, that after the death of Joseph Cain, the widow and heirs of Joseph Cain, deceased, were the *bona fide* occupants of the said east half of lot 6 block 69, and that they had retained actual possession thereof ever since, except as otherwise specified in the said finding of facts by the Supreme Court of the Territory of Utah. (*Ibid.*)

23. In finding as a fact, that the said Elizabeth Cain, Joseph M. Cain, and Elizabeth T. Crismon were the

occupants of the said east half of lot 6, block 69, within the statute, at the time of the entry of said lands by the mayor of Salt Lake City. (*Ibid.*)

24. In finding as a fact, that the evidence did not show that Brigham Young, William Jennings, or Samuel Stringfellow was an inhabitant of Salt Lake City at the date of the entry of said land by the mayor of Salt Lake city, or at any subsequent time. (*Ibid.*)

25. In finding as a fact, that the evidence did not show that the said Brigham Young, William Jennings, or Samuel Stringfellow, or either of them, had any interest in the property, or any part thereof, that would entitle them, or either of them, to the Government title through the mayor of Salt Lake City. (*Ibid.*)

26. In finding as a fact that the whole of the said east half of the said lot, to block 69, was held by Joseph Cain, deceased, and his family, in his life-time, and by his widow and children, after his death, as their homestead. (*Ibid.*)

27. In finding as facts, that by reason of the law and findings made by the said Supreme Court of Utah, "that neither George Stringfellow, Samuel Stringfellow, Brigham Young, or William Jennings were entitled to any deed or title from the mayor for any of the said half lot, and that each and every part of said east half of said lot 6 is the property of Elizabeth Cain, Joseph Cain, Elizabeth T. Crismon, heirs at law of Joseph Cain, deceased, and that they are entitled to a deed therefor from the mayor of Salt Lake City." (*Ibid.*)

28. In holding that the act of Congress, entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved May 2d, 1867, re-

quired it to appear that one claiming a conveyance of the Government title thereunder must have been an inhabitant of the town in which the ground is situated to which he claims title (record, 286–94).

29. In holding that the occupancy of one claiming title under the last-named act of Congress must be in actual individual occupancy, and not occupancy begun and held by agents or tenants merely. (*Ibid.*)

30. In holding that the act of Congress last mentioned did not contemplate that any one should claim title to more lands or parcels of ground than he actually individually occupied. (*Ibid.*)

31. In holding that the possession of the ancestor when he died was the possession of the heir, though the heir had since relinquished possession and ceased to occupy. (*Ibid.*)

32. In holding that there was evidence that Cain bought and paid for the half lot. (*Ibid.*)

33. In holding that Cain exercised acts of ownership over the half lot; that it was assessed in his name and as an individual, and that he paid taxes on the same until his death, and that the weight of the authority showed that he claimed the whole of the half lot, and that his possession and ownership of possession was recognized by Richards and the public generally. (*Ibid.*)

34. In holding that at the death of Joseph Cain he was in the undisputed possession of all of the said half lot. (*Ibid.*)

35. In holding that inhabitancy of Salt Lake City was essential to a successful claim, and should have been proved. (*Ibid.*)

occupants of the said east half of lot 6, block 69, within the statute, at the time of the entry of said lands by the mayor of Salt Lake City. (*Ibid.*)

24. In finding as a fact, that the evidence did not show that Brigham Young, William Jennings, or Samuel Stringfellow was an inhabitant of Salt Lake City at the date of the entry of said land by the mayor of Salt Lake city, or at any subsequent time. (*Ibid.*)

25. In finding as a fact, that the evidence did not show that the said Brigham Young, William Jennings, or Samuel Stringfellow, or either of them, had any interest in the property, or any part thereof, that would entitle them, or either of them, to the Government title through the mayor of Salt Lake City. (*Ibid.*)

26. In finding as a fact that the whole of the said east half of the said lot, to block 69, was held by Joseph Cain, deceased, and his family, in his life-time, and by his widow and children, after his death, as their homestead. (*Ibid.*)

27. In finding as facts, that by reason of the law and findings made by the said Supreme Court of Utah, "that neither George Stringfellow, Samuel Stringfellow, Brigham Young, or William Jennings were entitled to any deed or title from the mayor for any of the said half lot, and that each and every part of said east half of said lot 6 is the property of Elizabeth Cain, Joseph Cain, Elizabeth T. Crismon, heirs at law of Joseph Cain, deceased, and that they are entitled to a deed therefor from the mayor of Salt Lake City." (*Ibid.*)

28. In holding that the act of Congress, entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved May 2d, 1867, re-

quired it to appear that one claiming a conveyance of the Government title thereunder must have been an inhabitant of the town in which the ground is situated to which he claims title (record, 286–94).

29. In holding that the occupancy of one claiming title under the last-named act of Congress must be in actual individual occupancy, and not occupancy begun and held by agents or tenants merely. (*Ibid.*)

30. In holding that the act of Congress last mentioned did not contemplate that any one should claim title to more lands or parcels of ground than he actually individually occupied. (*Ibid.*)

31. In holding that the possession of the ancestor when he died was the possession of the heir, though the heir had since relinquished possession and ceased to occupy. (*Ibid.*)

32. In holding that there was evidence that Cain bought and paid for the half lot. (*Ibid.*)

33. In holding that Cain exercised acts of ownership over the half lot; that it was assessed in his name and as an individual, and that he paid taxes on the same until his death, and that the weight of the authority showed that he claimed the whole of the half lot, and that his possession and ownership of possession was recognized by Richards and the public generally. (*Ibid.*)

34. In holding that at the death of Joseph Cain he was in the undisputed possession of all of the said half lot. (*Ibid.*)

35. In holding that inhabitancy of Salt Lake City was essential to a successful claim, and should have been proved. (*Ibid.*)

36. In holding that there had been a failure to find that Young, Jennings, and the Stringfellows were in possession of the respective portions claimed by them, or any of the said portions, at the date of the entry by the mayor of Salt Lake City. (*Ibid.*)

37. In holding that the following finding by the district court was unwarranted, so far as the children of Cain were concerned, viz:—"That if said Joseph Cain ever occupied or claimed the right of possession of any portion of the north half of the east half of said lot, after he moved into the new house, his heirs and representatives soon after his decease gave up the possession." (*Ibid.*)

38. In holding that the evidence did not warrant the finding of the district court as follows, viz:—"That portions of the south half of the east half of said lot, formerly in possession of the heirs of Joseph Cain, have been sold and possession delivered to the persons named in the judgment and decree of the court, with a particular description of the portion that each was in possession of and entitled to." (*Ibid.*)

39. In holding that the evidence did not warrant the finding of the district court as follows, viz:—"That the north half of the east half of said lot has been subdivided, and the occupancy, possession, and right of possession have been in various persons, and that the persons named in the judgment and decree of the court are in possession and entitled to the possession of the several particular descriptions of land given in connection with their names." (*Ibid.*)

40. In holding that there was evidence to show that the road privilege granted to the Stringfellows was

merely a written consent given by S. W. Richards and Elizabeth Cain. as individuals, and without consideration and subject to revocation at any time. (*Ibid.*)

41. In holding that there was no evidence that, when administration upon Cain's estate was taken out by S. W. Richards and Elizabeth Cain, any debts or obligations of the deceased remained unpaid. (*Ibid.*)

42. In holding that the decree of the probate court authorizing the sale of a portion of the said half lot to the Stringfellow Brothers was beyond the jurisdiction of the said probate court. (*Ibid.*)

43. In holding that the sale and conveyance to the said Stringfellow Brothers was null and void, and that the said Stringfellows took nothing by it. (*Ibid.*)

44. In holding that the said Stringfellow Brothers occupied the portion of the said half lot held by them as trespassers, and that they had no rights as against the Cain heirs. (*Ibid.*)

45. In holding that Jennings was in possession, if at all, of No. 51 (Ransohoff), as a co-occupant merely, with the Cain heirs, and that Jennings' interest could be only that of Mrs. Cain. (*Ibid.*)

46. In holding that Brigham Young had no right of claim, interest, or possession which he was entitled to convey. (*Ibid.*)

47. In holding that the deed from Young to Jennings for No. 45 (Eagle Emporium) was valueless. (*Ibid.*)

48. In holding that there was no evidence that Jennings was in possession of No. 45, at the entry of the

town site by the mayor of Salt Lake City, and that the character of his possession was not shown, and that it did not appear that he held possession by consent of the heirs. (*Ibid.*)

49. In holding that it was necessary that the possession of Jennings of No. 45 should be by the consent of the Cain heirs, legally obtained, by proper action to which they were a party, and that otherwise their rights were in no way bound or affected by his possession. (*Ibid.*)

50. In holding that Jennings, when he was in possession of No. 45, was there wrongfully and as a trespasser, and gained no rights that could be recognized in ascertaining to whom the legal title should be made. (*Ibid.*)

51. In holding that the allotment of No. 45 to Jennings by the District Court was erroneous. (*Ibid.*)

52. In holding that the east sixteen feet of the fifty-six feet north, fronting on First South street of the last parcel of the said lot allotted to Jennings, belonged to the Cain heirs, and that if Jennings was in possession thereof, it was as a trespasser to the Cain heirs, and that he, therefore, had no title to the said parcel of land. (*Ibid.*)

53. In holding that the said allotment by the District Court of this sixteen feet front to Jennings was erroneous. (*Ibid.*)

54. In holding that the fourteen feet adjoining the said last-mentioned sixteen feet, fronting upon First South street, had never been in Price's possession, according to the preponderance of the testimony in the case. (*Ibid.*)

55. In holding that the evidence showed that Eddins' ground, which he subsequently conveyed to Price, was west of the centre of the lot, and that Price didn't seem to have been in possession of the said forty feet for some twelve years before his deed to Jennings was made. (*Ibid.*)

56. In holding that Jennings' possession of the said last-named parcel of ground was without authority and wrongful, and could not invalidate the rights of the heirs of Joseph Cain, deceased, without their consent. (*Ibid.*)

57. In holding that Nos. 47 and 49, with extensions back to the west, had never been possessed by Brigham Young, as contemplated by the act of Congress. (*Ibid.*)

58. In holding that Mrs. Ogden's occupation of a portion of the said ground was not evidence of possession and ownership by Brigham Young, and gave him no rights, and was merely a permission from Joseph Cain to her to use the ground temporarily. (*Ibid.*)

59. In holding that Jennings is not entitled to claim under the deed to him by the heirs of Willard Richards, made shortly before the filing of the declaratory statements, and that he did not have possession under that deed; and that the whole of the said Richards' right had been transferred to Joseph Cain in his life-time. (*Ibid.*)

60. In holding that the occupation of a portion of the said lot by Mrs. Braddock and Mrs. Franklin, two of the polygamous wives of Willard Richards, while Cain was upon the lot, was no evidence that Richards claimed the said lot, and that their occupancy was not Richards' occupancy. (*Ibid.*)

town site by the mayor of Salt Lake City, and that the character of his possession was not shown, and that it did not appear that he held possession by consent of the heirs. (*Ibid.*)

49. In holding that it was necessary that the possession of Jennings of No. 45 should be by the consent of the Cain heirs, legally obtained, by proper action to which they were a party, and that otherwise their rights were in no way bound or affected by his possession. (*Ibid.*)

50. In holding that Jennings, when he was in possession of No. 45, was there wrongfully and as a trespasser, and gained no rights that could be recognized in ascertaining to whom the legal title should be made. (*Ibid.*)

51. In holding that the allotment of No. 45 to Jennings by the District Court was erroneous. (*Ibid.*)

52. In holding that the east sixteen feet of the fifty-six feet north, fronting on First South street of the last parcel of the said lot allotted to Jennings, belonged to the Cain heirs, and that if Jennings was in possession thereof, it was as a trespasser to the Cain heirs, and that he, therefore, had no title to the said parcel of land. (*Ibid.*)

53. In holding that the said allotment by the District Court of this sixteen feet front to Jennings was erroneous. (*Ibid.*)

54. In holding that the fourteen feet adjoining the said last-mentioned sixteen feet, fronting upon First South street, had never been in Price's possession, according to the preponderance of the testimony in the case. (*Ibid.*)

55. In holding that the evidence showed that Eddins' ground, which he subsequently conveyed to Price, was west of the centre of the lot, and that Price didn't seem to have been in possession of the said forty feet for some twelve years before his deed to Jennings was made. (*Ibid.*)

56. In holding that Jennings' possession of the said last-named parcel of ground was without authority and wrongful, and could not invalidate the rights of the heirs of Joseph Cain, deceased, without their consent. (*Ibid.*)

57. In holding that Nos. 47 and 49, with extensions back to the west, had never been possessed by Brigham Young, as contemplated by the act of Congress. (*Ibid.*)

58. In holding that Mrs. Ogden's occupation of a portion of the said ground was not evidence of possession and ownership by Brigham Young, and gave him no rights, and was merely a permission from Joseph Cain to her to use the ground temporarily. (*Ibid.*)

59. In holding that Jennings is not entitled to claim under the deed to him by the heirs of Willard Richards, made shortly before the filing of the declaratory statements, and that he did not have possession under that deed; and that the whole of the said Richards' right had been transferred to Joseph Cain in his life-time. (*Ibid.*)

60. In holding that the occupation of a portion of the said lot by Mrs. Braddock and Mrs. Franklin, two of the polygamous wives of Willard Richards, while Cain was upon the lot, was no evidence that Richards claimed the said lot, and that their occupancy was not Richards' occupancy. (*Ibid.*)

61. In holding that the claim of Brigham Young to No. 47 (Co-operative Institution) could not be sustained, and had no foundation in justice; and that he had never been an occupant of the said No. 47 nor 49, within the meaning of the statute. (*Ibid.*)

62. In holding that it was error in the District Court to allow the claim of the said Brigham Young to the said No. 47 and the said No. 49, or either of them. (*Ibid.*)

63. In holding that the heirs of Joseph Cain had possession of the whole half lot when Joseph Cain died; that they never gave up that possession, and that they were not bound to submit; because, while under age, the control of the lot passed from them. (*Ibid.*)

64. In holding that the said children of Joseph Cain had, until their majority, to enforce their claims. (*Ibid.*)

65. In holding that the said half lot was the homestead occupied by the family of the said Joseph Cain, within the meaning of the territorial statute, and that under that statute the Cain heirs were entitled to claim the same. (*Ibid.*)

66. In ordering and adjudging that the children and heirs of Joseph Cain, deceased, should have the right and title to a fee simple in the undivided two-thirds interest in said half lot, and that his widow should have the right and title to one undivided third interest for life or widowhood, with remainder in fee to the children and heirs, and in ordering that the mayor of Salt Lake City should convey accordingly. (*Ibid.*)

67. In holding that the Supreme Territorial Court of Utah had the power to review the facts found by the Third District Court in this case. (*Ibid.*)

68. In refusing to hold that the act of Congress of the 2d of March, 1867, enacted that the occupation and possession which gave their rights to the claimants was that which existed at the time of the entry of the lands by the mayor of Salt Lake City. (*Ibid.*)

69. In refusing to hold that those in possession of the land when the entry was made by the mayor of Salt Lake City, were the persons for whom he held the lands in trust, and to whom he was bound to make the respective deeds. (*Ibid.*)

70. In refusing to hold that all of the Cain claimants, Mrs. Cain, Elizabeth T. Crismon, and Joseph M. Cain, were estopped by their conduct from claiming any or some portions of the said half lot (excepting those portions awarded to them by the district judge, viz., Nos. 53 and 55).

A. SYDNEY BIDDLE,
GEORGE W. BIDDLE,
WILLIAMS & YOUNG,
SHEEKS & RAWLINS,
Of Counsel.

BRIEF OF ARGUMENT.

The meaning of the act of Congress, from which title to the land in dispute springs, is simple in its language, and the intention of Congress is not difficult to explain. Obviously, prior to the passage of this act no title existed in any of the settlers. It is true that till the true owner of the land, the Government of the United States, chose to interfere an organized community of trespassers might hold the land without inflicting damage upon the rest of the community, and under a system of laws as

complicated and sensible as those existing elsewhere. Rights, in a certain sense, might be acquired by one member of such a community against another—rights which inside of the community would have the sanction of positive law; nay, more than this, rights which, resting upon the foundation of justice, might properly be respected by the lawful owner, and which, when he chose to legislate, might be, if he thought proper, confirmed. No one, however, will attempt to argue that such moral claims would be entitled IN LAW to the slightest consideration, unless ratified by, or at least, if in conflict with, the will of the real owner, when expressed by appropriate legislation.

I. The first question to be discussed, therefore, is the nature of the title given by the act of Congress, of 2d March, 1867.

Before reverting to its terms, let us recall its object. The public lands had been occupied in many instances, by settlers, who had grown into village and town communities, governed by laws of their own, and requiring nothing but an affirmation of title to place them upon the same level with similar communities owning the land. But in all early settlements title must arise from occupation, and is gained and lost as the occupation arises or ceases. A band of shipwrecked sailors takes possession of an uninhabited island; if orderly and intelligent, they will subdivide the most desirable portions through some superior authority, which they have erected for that purpose, in order that disputes may be avoided. As soon as the settler *occupies*, with the consent of his associates, he *owns* the land held in possession, subject to the regulations prescribed by the community of which he is a member. But suppose the occupation is abandoned, the title at once disappears,

and the next occupant becomes as lawfully the owner as his predecessor. The sailor community removes, we will suppose, to another more desirable island, or a passing ship carries them away. A second crew are cast upon the ground already occupied and make it a permanent abiding-place. The new-comers, of course, possess the land, providing the abandonment was actual and intentional, to the same degree as if they had been the original settlers. Now let us go one step further. The island, though uninhabited, is part of the domain of a civilized sovereignty. It becomes desirable to give by positive law the legal rights which, without legislation, can not arise. Disputes have already begun. They must be terminated in the interest of good order. Members of the original settlement, who have abandoned it, are returning to claim the fruits of the labor and skill of their successors. No LAW exists by which such disputes can be determined. An intelligent Government would, under such circumstances, enact precisely such a law as that which this court is called on to expound.

"Whenever," such a law would run, "part of our territory has been settled and occupied, the municipal authorities may purchase it at a trifling cost, and when that has been done, the land so settled and occupied shall be held in trust FOR THE SEVERAL USE AND BENEFIT OF THE OCCUPANTS THEREOF, according to their respective interests; and this trust shall be conducted, as regards the disposal of the separate lots, under such regulations as may be prescribed by the legislative authority of the community for whose benefit this law has been passed."

It is unnecessary to suggest that under such a grant of power the local legislature could neither add nor take away anything from the rights thus given, and that any law purporting to be a *regulation* of the trust, which was in reality an alteration of its terms, would be, *pro tanto*, invalid.

Who, then, are *the occupants* of the public lands contemplated by the act in question? Are they the original settlers, who, abandoning or selling their supposed title long before the real owner has declared his willingness to part with his, see in the provisions of this beneficent statute an opportunity for stealing the fruits of other men's labor? Was the law intended to benefit the *occupants*, as its language declares, or those whose former casual and interrupted possession would, in the absence of legislation, give them no greater legal than moral rights? Fortunately this question has been decided by this court in construing the language of an act identical in its material portions with that under consideration.

A general act of Congress was passed on the 28th of May, 1844 (5 Stat. at Large, 657), by which, under circumstances similar to those in the present case, the probate judge was authorized to enter at the proper land office the land settled and occupied by settlers who had gone upon the land before the time when it had been surveyed and become subject to public entry. The entry by the probate judge was directed (in language identical with that employed in the act of 1867) to be made "in trust for the several use and benefit of the occupants thereof, according to their respective interests, the execution of which trust as to the disposal of the lots in such town and the proceeds of the sale thereof to be conducted under such rules and regulations as may be prescribed by the legislative authority of the State or territory in which the same is situated." A subsequent special act (May 28th, 1864, 13 Stat. at Large, 94) for the relief of the citizens of Denver was passed, containing language to the same general effect, the probate judge being in the last statute directed to enter the lands "in trust for the several use and benefit of the rightful occupants of said land, and the *bona fide* owners of the

improvements thereon, according to their respective interests."

The principal question raised in the case was whether the territorial statute (of March 11th, 1864), passed in pursuance of the first of the above acts, was in harmony with that act. The territorial law provided that the probate judge should hold in trust for "the person or persons who shall have, possess, or be entitled to the possession or occupancy thereof, according to his, her, or their respective rights or interest in the same, as they existed in law or equity, *at the time of the entry of such lands, or to his, her, or their heirs or assigns.*" Upon this point, Mr. Justice HUNT, delivering the opinion of this court (Cofield *vs.* McClelland, 16 Wallace, 331–334), said:—

"This regulating act of the territory is in harmony with the acts of Congress. It expresses more explicitly than do those acts, the statement that THE OCCUPATION AND POSSESSION WHICH GIVES THE RIGHT IS THAT WHICH EXISTS AT THE TIME OF THE ENTRY OF THE LANDS BY THE PROBATE JUDGE. THOSE IN POSSESSION OF THE LAND WHEN THE ENTRY SHALL BE MADE BY THE PROBATE JUDGE ARE THE PERSONS FOR WHOM HE HOLDS THE LANDS IN TRUST AND TO WHOM HE IS TO MAKE THE RESPECTIVE DEEDS. Although less explicitly declared, this is the construction and meaning of the acts of Congress also.

"The land on which the city of Denver stands was entered by the probate judge in May, 1865. The evidence is strong and quite convincing, that at that date, as well as at the time of the passage of the enabling act (May, 1864), Mrs. McClelland, the defendant, was in the actual possession of lot No. 6, with valuable improvements made thereon, and paying the taxes on the same. Such must have been the conclusion of the court below, and we concur in it. The result is fatal to the plaintiffs'

right of recovery, * * * for the two reasons stated:—

"1st. That the defendant below was in possession of the lot in question at the time of the passage of the act for the relief of the city of Denver, and at the time of the entry of the lands made by the probate judge, by means of which she became and was the party by law entitled to the deed from the probate judge; * * We are of the opinion that the judgment of the court below, dismissing the complaint, was correct, and that it must be AFFIRMED."

IN THE PRESENT CASE IT IS NOT PRETENDED THAT THE APPELLEES, THE CAIN CLAIMANTS, HAVE EVER BEEN IN POSSESSION, ACTUAL OR CONSTRUCTIVE, OF THE NORTH HALF OF THE LAND IN CONTROVERSY (OR OF ANY PORTION OF THE HALF LOT WEST OF THE WELLS-FARGO FENCE, SINCE 1866; 118, C.; *ante* NOTE † TO PAGE 45 ON PAGE 47), SINCE THE DEATH OF JOSEPH CAIN, IN 1857, TO THE PRESENT TIME.

This proposition is not only not disputed by any one, but was proved by two of the three Cain claimants, viz., by Mrs. Elizabeth Cain (Richards) and her son, Joseph M. Cain (132, C.; 117, C.; 118, C.; 120, C.; and see *ante* 51–55 and notes on those pages). By reference to maps II. and III., the land claimed by the Cains, but of which they had no occupation since the years last mentioned, will be seen to include the whole of Nos. 45, 47, and 49, together with the land behind, or west, of those lots (being part of the *north half* of the half lot), as well as all of the land on the *south half* of this lot, west of that awarded to the Cains and to Groesbeck. In other words—

THE CAIN CLAIMANTS, SINCE THE YEARS MENTIONED, ARE NOT PRETENDED TO HAVE BEEN IN POSSESSION OF ANY OF

THE PORTIONS OF THE HALF LOT WHICH HAVE BEEN AWARDED IN THIS CASE TO EITHER JENNINGS OR BRIGHAM YOUNG.

The iniquity of the decision of the Supreme Court of Utah is further apparent from the fact that the entire value of the land in question has arisen during the period of non-occupancy by the Cains, and is almost wholly due to the fact of very valuable improvements erected by the present claimants or their grantors.

Thus, Jennings purchased No. 51 (Ransohoff) on the 1st of August, 1869, from Brigham Young, for *twenty thousand dollars*. This was more than two years and three months prior to the entry of Salt Lake City by the mayor, in pursuance of the act of Congress of March 2d, 1867, and of the territorial act of February 17th, 1869 (record, 283, *ante* 10–11). Now No. 51 had been sold by Mrs. Cain, for the benefit of her children's estate, on the 15th of April, 1864, to King for $2000 (record, 257, "1st;" 231; 138, C.; *ante*, 59), and by King, on the 26th of April, 1864, to Ransohoff (record, 257, "2d," *ante*, 59), for $2500. At the time of this last sale there were no improvements on No. 51; but Ransohoff erected a valuable store on it, and sold the lot and building on March 1st, 1869, to Brigham Young for *eighteen thousand dollars*.

The same is true of No. 45, on which the Eagle Emporium is built.

So, No. 47, claimed by and awarded to Brigham Young for the Zion Co-operative Mercantile Institution, was sold to the latter, in 1870, for $12,500 (record, 258, "2d" and "3d"; *ante* 62–3), though it had been purchased by Bassett and Roberts from Brigham Young, in April, 1865, for $2800 (record, 257–8, "1st").

The same is true of No. 49 (89; *ante* 62–3).

Jennings paid Price, in April, 1869, for the Eddins–Price strip, forty feet in front on First South street, *four*

thousand five hundred dollars. This lot has increased greatly in value (though to what extent does not appear), Jennings having built his "new building" upon it (230–31).

It will be recollected, moreover, that no claim of any kind was made to any of the foregoing lots prior to July 7th, 1872 (123, C.; *ante* 61), by any of the Cain claimants. No taxes were paid by them upon these strips of land, nor was there any evidence, of which a purchaser could take notice, of their supposed ownership.

But if the act of Congress means the opposite from that which this court has decided to be its meaning, the Cain heirs must fail, for they are all equitably estopped from claiming any of the land in question.

The conduct of the Cain heirs has been grossly fraudulent. Mrs. Cain sells property for her children's benefit, receives an adequate consideration, and expends it upon the property belonging to herself and her children, and then claims—not a return of the consideration, but the property sold when it has become enhanced in value tenfold. Her children live with her, enjoy the benefit of the consideration of the property sold by their mother, and then speculate upon the chances of a flaw in the title of the man whose labor and money has made the property sold a tempting prize. It is worth while to examine this conduct in detail.

(1.) Mrs. Cain's conduct.

As to the north five rods (Jennings and Brigham Young.)

Mrs. Cain admits that the *north five rods* were not, at any time since 1857 in the possession of herself or any of her family, constructively or otherwise (132, C.; *ante*, 62–3 and 53–4). During the whole of this time she was in possession of part of this very lot, Nos. 53 and

55, and during most of the time lived upon it with her children, the other two claimants. Thus she remained on the lot till the spring of 1858, went away for a few months, and then returned in the same year. She then rented her portion (the *south* five rods), and remained away till 1863, from which time she lived on the lot for four or five years, till 1868 (137, C.; *ante*, 54), and Joseph M. Cain swore that the whole family had resided in Salt Lake City for the twenty-two years preceding 1872 (144, C.). Now all of the improvements in question had been erected during this time. Thus, Bassett and Roberts bought No. 47 in 1865, and built upon it the Co-operative Drug Store prior to 1868 or 1869, when they sold it to Zion's Co-operative Mercantile Institution (27–8, C., 258). This valuable building was, therefore, erected *while Mrs. Cain and her two children, the present claimants, were living on the same lot, less than forty feet away, without notice, objection, or claim, and in the absence of any circumstance that could put the actual occupant upon notice of outstanding title in another.*

The same is true of No. 45, on which was built the Eagle Emporium. Jennings was in possession of, and exercised ownership over, this lot (and probably erected the building) during this very time (28, C.). The same is also true of No. 49 (Co-operative Store), there being, confessedly, no improvement on this lot when it passed, in 1857, into Brigham Young's hands.

As to No. 51 (Jennings–Ransohoff).

The conduct of Mrs. Cain in regard to No. 51 is still more fraudulent. This strip was sold by her to King, in April, 1864 (she says 1855 or 1856, 138, C., but this is clearly a misprint; see record, 257, "1st,") for $2000. King sold it in the same month to the Ransohoffs for $2500, and they sold the lot and improvements (the

"Ransohoff" building) in March, 1869, to Brigham Young for $18,000, (record, 257, "2d" and "3d"). The improvements were, therefore, erected between April, 1864, and March, 1869, which raised the value of the lot from $2500 to $18,000, and these were the very years that Mrs. Cain, with her children, were living *on the adjoining strip*, enjoying the benefit of the consideration paid for the lot sold. No notice, complaint, or claim of any kind is pretended to have been made by any one. Nor was it pretended that the taxes had been paid by any one excepting the respective occupants for the time being, viz., King, the Ransohoffs, Brigham Young, and Jennings.

(2.) Joseph M. Cain's conduct.

As to the north five rods (Jennings and Brigham Young).

Young Cain was not only guilty of the same passive fraud as his mother (*ante*, 61), but actually plotted with his attorneys to seize the land on the *north five rods* from the lawful owners. Cain always resided with his mother from the time of his father's death (72, C.; *ante*, 54), and came of age on May 14th, 1871 (*ante*, 54). In 1865, therefore, when Bassett and Roberts became the owners of No. 47, he was fifteen years of age. He lived on the adjoining strip the whole time the drug store was being erected, and never gave any sign that he intended to dispute the occupant's title. He testified himself (122, C.; 117, C.; *ante*, 61) that neither he nor any of his family gave Jennings or Young notice of this monstrous claim till about September 12th, 1871 (*ante*, 61). *This was four months after he had come of age* (May 14th, 1871). But in the meantime *he had consulted counsel in reference to the matter several times, and had been "instructed to keep quiet until he* (I) *became of age*." In consequence of this ad-

vice he pursued the honorable course recommended, *and never told Jennings, or any other occupant, till September, 1871, that he owned or claimed land west of the Wells-Fargo fence or north of the Ransohoff line* (123, C.; *ante*, 61).

It will hardly be claimed that the disability of infancy will apply so as to remove the principle of estoppel from a case of fraud of this nature (see the cases collected in note 3, Bigelow on Estoppel, 2d edition, 448). But in addition, it will be recollected that as to Jennings' "New Building" on the *back strips*, the fraudulent silence and encouragement by young Cain continued, admittedly, for months after he came of age, and when he first saw Jennings, which seems to have been in September, 1871 (*ante*, 61; Record, 122 C.), the latter had stopped this building, having heard of the Cain claim through other parties.

As to No. 51 (Jennings–Ransohoff).

This property was, in 1864 (record 257, "1st,") sold by Mrs. Cain, who was then living on the half lot. Joseph M. Cain was then fourteen years of age and his sister sixteen (*ante*, 54). No objection was made to any of the sales of this property by either of these children, for whose benefit it had taken place, until September, 1871 (*ante*, 61,) when Joseph M. Cain had attained his majority for several months, and his sister hers for more than two years (*ante*, 54).

(3.) Mrs. Crismon's conduct (Elizabeth T. Cain).

As to the north five rods (Jennings and Brigham Young).

Mrs. Crismon came of age on April 14th, 1869 (*ante*, 54). She was married on June 1st, 1871 (114, C.). There were, therefore, two years of fraudulent silence

upon her part after attaining her majority and before marriage, during which time she lived with her mother and brother, and while she, with them, was in actual possession of part of the lot (Nos. 53 and 55).

As to No. 51 (Jennings–Ransohoff), the same remarks apply in her case as in that of her brother (*q. v.*)

It is certainly a work of supererogation to cite cases on estoppel in this court. (The court below appear to have been unaware of the existence of such a principle existing in law, or in what they are pleased to call "equity"); some of the cases are, however, so similar to the one before the court now that their applicability will not be questioned.

The leading case is Pickard *vs.* Sears, 6 Ad. & El., 469. In an action of trover it appeared that the property was taken by the sheriff under a *fieri facias* issued against one Metcalfe, to whom the property had originally belonged, and who was in possession at the time of the seizure, and was sold by the sheriff to the defendants. The plaintiff proved the execution of a mortgage some months prior to the issue of the *fieri facias*, in which the land, house, and machinery (for which last the present action was brought) were mortgaged to the plaintiff, with covenant to the latter that in case of default it should be lawful for him to enter and take possession of the goods, &c. Notice of this deed was given by the plaintiff to the defendant, after the sale by the sheriff, and possession demanded and refused. By the evidence of the attorney of Hill, the plaintiff in the execution, it appeared that after the seizure the plaintiff had repeatedly conversed with the witness, sometimes in Metcalfe's presence, referring to the seizure, and had never made any claim to the goods, though he stated that Metcalfe was his debtor and frequently consulted with the witness

as to the best way of disposing of the property; that, after a negotiation for sale had been made, the witness had advised the plaintiff and Metcalfe to try to raise £1,000 to pay off the execution sued for, and the remainder to go to carry on the business; that the plaintiff had named a party from whom it was attempted, but without success, to obtain the money; and that the *witness had told the plaintiff that the defendants were about to purchase the property.* It was not disputed that the mortgage had been made in good faith, or that the defendants had purchased *bona fide*, and without notice of the mortgage. DENMAN, C. J., directed the jury to find for the plaintiff. A rule having been obtained for a new trial, it was made absolute, DENMAN, C. J., saying * *

"Much doubt has been entertained whether these acts of the plaintiff, however culpable and injurious to the defendant, and however much they might be evidence of the goods not being his, in the sense that any persons, and amongst others the defendant, would be naturally induced thereby to believe that they were not, furnished any real proof that they were not his. His title having been once established, the property could only be divested by gift or sale, of which no specific act was ever surmised.

"*But the rule of law is clear that where one by his words or conduct, willfully causes another to believe the existence of a certain state of things, and induces him to act on that belief so as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time.*" It will be observed that in this case the conversations of the plaintiff complained of were held not directly with the defendants.

In Stephens *vs.* Baird, 9 Cowen, 274 (1828), Baird declared in trover for certain lumber. The lumber was the joint property of the defendant and Benedict, four-fifths

belonging to Stephens and the remainder to Benedict. The plaintiff had purchased the lumber under an execution sale against Benedict. The execution creditor sent the officer to Stephens, told him he had an execution against Benedict, and asked him to point out to him the lumber which Benedict owned. Stephens showed him a quantity, and told him that Benedict owned a fifth of it. Such a portion was then levied upon and receipted for, and sold to Baird, without notice of any claim by Stephens. The latter attempted to set up the defense that Benedict's interest was under a special executory contract, which he had not performed. The court said:—

"It would be a violation of good faith to permit him now to set up any special agreement between him and Benedict, to defeat the title of the plaintiff below, who was a *bona fide* purchaser at the constable's sale. *Then was the time for the defendant below to have given notice of the special agreement.* He is precluded from saying that Benedict had not an interest in the property which could be sold upon execution, or that that interest was subsequently forfeited by the omission to fulfill the special agreement on his part."

In The First Presbyterian Congregation of Salem *vs.* Williams, 9 Wend., 147, the plaintiffs, by their attorney, called upon the defendant for rent, and asked if there was property on the premises out of which it could be collected by distress. He answered that there was not, and pointed out all the property he had, which was but a trifle.

In an ejectment brought for default in payment of the rent, the defendant offered to show that there was sufficient property on the premises, out of which the rent could have been collected. The court decided that he was estopped from disputing the truth of his admission to the plaintiff's attorney.

In Dezell *vs.* Odell, 3 Hill, 215, it appeared that the

plaintiff, a constable, having levied upon goods, delivered them to the defendant on his giving a receipt, promising to redeliver them by a given day, and that when the day arrived he refused to comply with his promise, and claimed that the goods were his own at the time the levy was made. The court held him estopped in an action of trover to set up this defense. COWEN, J., said, "It may be conceded that had the defendant's claim been interposed at the time of the levy, and he had signed the receipt in terms, without prejudice, the question would have been open. The creditor would thus have been put upon his guard, and enabled to seek for other property on finding that his debtor had no title to that in question. Indeed, here was a course of action on the part of the receiptor, directly calculated to influence the conduct of the creditor in a way prejudicial to his interests, unless we hold the receiptor. The officer being induced to part with the possession, or to forbear taking actual possession, by the receiptor recognizing his right and agreeing to take or hold for him, was itself an injury; if we now let the defendant go free we then have a clear case of an admission by the defendant, intended to influence the conduct of the man with whom he was dealing, and actually leading him into a line of conduct which must be prejudicial to his interests, unless the defendant be cut off from the power of retraction. This I understand to be the very definition of an estoppel *in pais*. For the prevention of fraud the law holds the admission to be conclusive."

In Gregg *vs.* Wells, 10 Ad. & El., 90, the action was trover for the fittings and furniture of a public house. The plaintiff, being the owner of the goods, demised them to one Durham, who thereupon became tenant of the house to third parties under an agreement made in the plaintiff's presence, giving his landlords a lien on the goods. The landlords, however, did not know that the

plaintiff was the owner of the property, nor did they know of the arrangement with Durham; and nothing was said or done to apprise them of these facts. Subsequently Durham sold the fittings and furniture to the defendant without the plaintiff's knowledge, and the defendant purchased in good faith, and in ignorance of the plaintiff's title, and thereupon became tenant under Durham's landlords. *The court held that the action could not be maintained.* LORD DENMAN, C. J., said, "Pickard *vs.* Sears was in my mind at the time of the trial, and the principle of that case may be stated even more broadly than it is there laid down."

"*A party who negligently or culpably stands by and allows another to contract on the faith and understanding of a fact which he can contradict, can not afterwards dispute that fact in any action against the person whom he has himself assisted in deceiving.*"

In Niven *vs.* Belknap, 2 Johns., 573, the plaintiff had applied to the defendant Belknap to purchase a farm, then in the possession of Belknap, and was informed by him that a third person, who held a mortgage from him (Belknap) upon the farm to nearly its value, had the disposal of the property. The defendant then went with the plaintiff to the mortgagee, and an arrangement was made between him and the plaintiff, in the presence of the defendant, for the absolute purchase of the farm, and the mortgagee thereupon executed a conveyance in fee to the plaintiff, who afterwards took possession as owner, and made considerable improvements on the land. Subsequently the defendant, the mortgagor, made an absolute conveyance of the land to his son, and this suit was begun against father and son, with a prayer that they might be compelled to discover any pretended title, and required to renounce it or be enjoined from asserting it.

THOMPSON, J., said, "Though it does not appear positively from this testimony that Belknap took any ac-

tive agency in this negotiation, *yet his presence and silence are equally efficacious and binding upon him, if the complainant was thereby misled and deceived. There is an implied, as well an express, assent; as where a man who has a title, and knows it, stands by and either encourages and does not forbid the purchase, he and all claiming under him shall be bound by such purchase.* It is very justly and forcibly observed by a writer on this subject that there is a negative fraud in imposing a false apprehension on another by silence where silence is treacherously oppressive. In equity, therefore, where a man has been silent when in conscience he ought to have spoken, he shall be debarred from speaking when conscience requires him to be silent."

In Gregg *vs.* Von Phul, 1 Wall, 274, Von Phul, the plaintiff, entered into an agreement with Gregg to sell and convey to the latter certain premises. Von Phul covenanted that he would convey the premises by deed in fee, "with full covenants of seizure and warranty, on or before the first day of March, 1857," and Gregg agreed to execute his three promissory notes for the sum to be paid. On the 5th of May, 1860, Von Phul's agent tendered a deed to Gregg, and demanded the money due on the contract of purchase. This last deed covenanted that Von Phul was "lawfully seized" in fee of the premises, and that he "would warrant and defend the title" against all persons. Gregg looked at the deed, and made no objection to it, but stated that he was not ready to pay the money, and handed back the instrument. Von Phul brought ejectment for the premises of which Gregg had taken possession under contract of purchase; and the defense was, that the deed tendered did not correspond with the one agreed upon. Held, that he was estopped to set up such a defense. "* * * The very silence of Gregg," says DAVIS, J., "was well calculated to influence the conduct of Von Phul, and it would

be against good conscience to permit Gregg now to avail himself of objections which his failure to make when the deed was tendered must have induced Von Phul to suppose did not exist. * * * *No one is permitted to keep silent when he should speak, and thereby mislead another to his injury. If he has a claim against an estate and does not disclose it, but stands by and suffers the estate to be sold and improved*, with knowledge that the title had been mistaken, he will not be allowed afterwards to assert his claim against the purchaser. And justly so, because the effect of his silence has actually misled and worked harm to the purchaser."

In Brooks *vs.* Curtis, 4 Lans., 283, it was held that if the owner of an estate stood by and see another expend money upon an adjoining estate, without which such expenditure would be useless, and do not interpose to prevent the work, he will not be permitted to interrupt the enjoyment of such easement.

In Ives *vs.* North Canaan, 33 Conn., 402, the plaintiff who sued to recover an assessment of taxes on cattle, was held estopped to deny their legality, he having paid the tax upon them without complaint for six years.

So, when a person made a note in the name of himself and another as partners, the other person being present at the time, and not objecting, the latter will be estopped to allege that he was not a partner at the time the note was executed.

And in Fletcher *vs.* Holmes, 25 Ind., 458, a recent case, the Supreme Court says that a mere failure to give notice of a right where another, without knowledge of the facts, is investing his money, and where it may be fairly concluded that he would not do so if informed of the fact, will generally preclude a subsequent setting up of the claim thus concealed.

In Corning *vs.* Troy Iron and Nail Factory, 39 Barb., 311, affirmed on appeal, 40 N. Y., 191, HOGEBOOM, J., said, "*It is because a party stands silently by and has an injuri-*

ous unwarrantable action done to his property or hears a false and injurious declaration made affecting his rights, and does not protest against it, that he is regarded as tacitly acquiescing in the propriety of such act, or the truth of such declaration, and shall not be permitted thereafter to question it, when such a course would work damage to an innocent party."

In Keeler *vs.* Vantuyle, 6 Pa. St. R., 250, an action had been brought against Simons and Vantuyle by Wood and judgment obtained against the former. An execution issued against both, the inquisition was waived by Simons alone, and the property sold to the plaintiff. The land really belonged to Vantuyle, to whom it had been sold by parol some years before by Simons, the former owner. Vantuyle had taken and held possession. Vantuyle had said in the presence of the plaintiff that he held no land. The court below held that "Vantuyle, being in the actual possession, was under no obligation to go to Wilkesbarre for the purpose of giving notice of his title at the sheriff's sale." The judgment was reversed, the court saying:—"If Vantuyle saw his property advertised for sale by the sheriff, on a day certain, on an execution against him, why should he omit to give notice? * * And although Vantuyle was in possession, if the jury believed he declared that he was not the owner, it would be but slight constructive notice. If he knew of the premises being taken in execution, and selling at sheriff's sale as his estate, it was his duty to give notice, and omitting to do so was a circumstance, and a strong circumstance, to be left to the jury in this contest about the right of possession and ownership of the land."

In Chapman *vs.* Chapman and Gansamer, 59 Pa. St. R., at page 218, AGNEW, C. J., says:—"Silence will postpone a title when one should speak out, when, knowing his own right, one suffers his silence to lull to rest instead of warning to danger; when, to use the language

of the books, silence becomes a fraud. Such a silence, though negative in form, is operative in effect, and becomes suggestive in the seeming security it leads to. He who is led by such a silence ignorantly and innocently to rest upon his title, believing it to be secure, and to expend money and make improvements upon his property without the seeming warning he should have had to dispel his illusion, will be protected by estoppel against recovery."

Nor will ignorance of the legal consequences of their acts, or of the legal effect of their silent acquiescence in the acts of others, relieve the appellees from the estoppel imposed upon them.

In Tilton *vs.* Nelson, 27 Barb., 595, MR. JUSTICE STRONG, at the special term, says:—"The rule is very clear and proper that *one is concluded, not only by what he does or says, but by the natural reasonable inferences from his declarations or conduct.* * * In this case the request that the bank should purchase at the commissioners' sale clearly indicated that the proceedings had been regular, and that the resulting title would be valid. Here the advice would have been wrong had not the proceedings of the commissioners been such as the statute required. I think I am safe in concluding that the advice given by Marks in this case * * was in effect an assertion that they had taken all the requisite preliminary steps to render such sale effectual, &c. It is precisely under such circumstances that the doctrine of estoppel *in pais* does and should apply.

At the general term, EMOTT, J., says:—"It is probably sufficient to dispose of the case to assume, as both parties seem to have done, that by some irregularity or failure of the loan commissioners the title which they could and did give to the bank at the sale was rendered defective. The answer was that Marks knew all the facts and circumstances attending the sale, but not that he knew or believed that the title was imperfect. If, however, he

knew all the facts, then his ignorance, if he was ignorant of his rights to any extent, was of the rules or principles of law which would control the case. For instance, he may have been aware, as a matter of fact, that some of the proceedings, or the sale itself, had been by one commissioner only, but he may have been ignorant that this would affect the validity of the title, and thus the question is presented whether ignorance of the law will prevent the application of the rule of equitable estoppel; for I think this is a fairer statement of the question than to put it, as was done by the plaintiff's counsel before us, whether the acts and assertions of Marks were not the mere assertion of a conclusion of law. The conduct of Marks can not be considered as merely the statement of an opinion upon the known facts of the case. It was a course of conduct by which the Westchester County Bank was directly requested and induced to take the deed under which the defendant claims. Marks is not alleged to have expressed any opinion upon the validity of the acts of the commissioners; but knowing precisely what those acts were, he encouraged and induced the bank to buy his lands, in the proceeding of which they were a part. He may or may not have been ignorant of the rules of law applicable to the case. It would be difficult, if not impossible, especially at this length of time, to show whether he really understood his rights correctly in this respect or not. But whether he did or not, I think when he or those privy to him in blood or estate seek to controvert the title thus made, and to avoid the estoppel alleged against them, they encounter two principles of law which were distinctly applied by Chancellor Kent in the case which I have cited,—a case in some respects stronger for the legal title than the one before us,—and where the chancellor expresses the opinion that the defendant had really been ignorant of his rights. The first of these principles is, that when a party procures, or even acquiesces in the disposition of his property by another,

under color of title, and pretending to title, he shall be bound by such disposition, and shall be presumed to know the law, so far as it is applicable to the case. The other is, that even if he shows that he was really ignorant of the law, and acted in that ignorance, still the maxim *ignorantia legis neminem excusat* will apply in favor of the other party."

In Storrs and Brooks *vs.* Barker, 6 Johns. Ch., at 169, a *feme covert,* seized of land, devised it to her husband, which was void by statute, and died without issue, leaving her father as heir at law; the husband, as devisee, took possession of the land, and continued to occupy and improve it with the knowledge of the father; and afterwards sold it, by his advice, to the plaintiff for a valuable consideration. Held, that the father was estopped from afterwards asserting his legal title, as heir, against the purchaser, on the ground that he was ignorant at the time that the devise was void by statute. CHANCELLOR KENT said:—"The presumption is that every person is acquainted with his own rights, provided he has had reasonable opportunity to know them; and nothing can be more liable to abuse than to permit a person to reclaim his property in opposition to all the equitable circumstances which have been stated upon the mere pretence that he was at the time ignorant of his title. Such an assertion is easily made and difficult to contradict, * * and if the person, as in this case, gives implicit confirmation to the title of the party in possession, and encourages him to sell, and encourages the purchaser to buy, the case is greatly altered, and equity and policy equally dictate that he, and not the purchaser, ought to suffer. His ignorance of the law ought not to protect him from the operation of the rule in equity. It may be said that the plaintiff was equally, with the defendant, presumed to know that the will of a *feme covert* was void. * * *If he had been acquainted with that rule of law, he had good reason to presume, from*

the acts and conduct of the defendant, that the will of the daughter had been either previously authorized by the defendant, or had received a valid recognition by him since her death. He had a right to consider the defendant's title, as heir, duly waived or abandoned. * * I shall accordingly decree that the defendant be perpetually enjoined from prosecuting at law his right, claim, or title, as heir to his daughter."

In Chapman *vs.* Chapman and Gansamer (*supra*), AGNEW, C. J., says :—"*Positive acts tending to mislead one ignorant of the truth, which do mislead him to his injury, are a good ground of estoppel, and ignorance of title on the part of him who is estopped will not excuse his act.*" * *

Nor can it be urged that Mrs. Cain can not be estopped because a married woman. She was not a married woman when the acts complained of were committed. She was the polygamous wife of Samuel W. Richards, and as such must be regarded as a *feme sole*.

Besides this, the acts complained of amount to a fraud. She permits a tract of land, adjoining her own property, to be dealt with as if belonging to others, for *fifteen years;* sees valuable improvements made, sees the reputed owners daily, and then reclaims. The exemption of a married woman from the ordinary burdens of estoppel, would not be carried to this extent.

It but remains to notice the inaccuracies in the findings of fact of the Supreme Court of Utah. That court makes the following assertions (*ante*, 17–20) :—

(1.) *Joseph Cain exercised acts of ownership over and claimed the whole half lot, never relinquishing any portion of it during his life-time, which right was universally recognized, and by Richards in particular.*

It was to meet this wholly unfounded assertion that

we have endeavored to condense the whole testimony in our history of the case (*ante*, 36–56), to which we beg to request the attention of this court. Every fact there stated has been verified, and the proper reference to the record appears in each instance. The material facts as to the lines and extent of Cain's occupation are stated (*ante*, 43–51, and notes to these pages, and see map III.) The weight of the evidence as to reputed ownership is strongly in favor of the Richards (see the pages of the record cited in the note, *ante*, 43). It is true that Cain exercised a control over the half lot after Richards' death, in 1854; but this was as the latter's administrator (*ante*, 49). Cain's right after Richards' death was not only not universally recognized, but the large majority of witnesses testified to the reverse (*ante*, 48–50 and notes to these pages). During Richards' lifetime there is, fortunately, no doubt. Not only did Cain allow him to use the land as detailed (*ante*, 45–51) but a deed was offered in evidence (180–1) by which Richards conveyed to Longstreth his strip (*ante*, 44) in which the following language was used (180–1):—

"Be it known by these presents, that I, Willard Richards, *the just, true, and rightful claimant and owner of possession of lot 6*, in block 69, containing one and a quarter acres, as plotted in the Great Salt Lake City survey, in Great Salt Lake City county, in the territory of Utah, do for, &c." The deed was dated March 1st, 1853, and acknowledged before Bullock, the recorder, Cain's witness, who swore that Richards had ordered him to put down Cain's name as the owner of the half lot *in 1848 or 1849* (57, 58, 62–3, C.). That Cain should have been the reputed owner, and admitted such by Richards, then, or in 1851–2–3, when he moved on the land, and while building his house, is, in view of this deed and the testimony of such men as Shearer, Snelgrove, Haskinson, the Hinmans, Pixton

and wife, Eddins, Mrs. Longstreth, Price, &c., all of them disinterested witnesses, and living either on the ground or immediately adjoining it, impossible to believe.

(2.) *Brigham Young was never an occupant of any part of the north five rods, and there has been no finding that Brigham Young was an inhabitant of Salt Lake City.*

These assertions, in view of the testimony, are somewhat remarkable (see *ante*, 52-3; *ante*, 59 as to No. 51; and *ante*, 62 as to Nos. 49 and 47; and as to the Eagle Emporium, *ante*, 63-4). Young said he had peaceable possession for many years, until the strips were sold to the present appellants (*ante*, 52), and as to those awarded to him, Nos. 49 and 47, he never lost possession (*ante*, 62-3). It will be recollected that the Co-operative Institution, who hold the title to No. 47 (Co-operative Drug Store) is identical with Brigham Young. It is a company of which he is the president. The Co-operative Store covers both Nos. 47 and 49, *and paid Young rent for No. 49* when his testimony was taken. A man is usually known as the occupant (in the sense of title) of land when he has an agent or tenant upon it, and occupation by proxy is as real as physical occupation.

(*a.*) As to the *inhabitancy* of the appellants, no such requirement exists in the act of Congress as that sought to be introduced into this case. Not a word about *inhabitancy* is to be found in the statute except in the title (*ante*, 2). The act is entitled "for the relief of the inhabitants of cities and towns," &c. What an extraordinary perversion of the reading of statutes to hold that in such a case an occupant and agent is to be excluded, to benefit, forsooth, a scoundrel who has never occupied but possesses the invaluable attribute of *inhabitancy*.

(*b.*) But there is ample evidence that Young was an inhabitant. He testified that he had been in peaceable possession, as the trustee of the church—for many years (*ante*, 51-2). The city was laid out by him (*ante*, 37), He controlled the north five rods (*ante*, 53, and see the testimony, *passim*). It is an undisputed proposition of law that in ejectment, when ownership or occupancy has been shown at a prior date, it is presumed to continue till the contrary is shown. The same would be true in the present case. No effort was made to disprove the fact, though Young was examined, and his inhabitancy of Salt Lake City is a part of the history of this country. Nothing could be better evidence of the *animus* of the majority of the Supreme Court than their reliance upon such a quibble as this circumstance. And what effect do they give to it? It is relied on, not to direct a new trial to have this fact ascertained, but to reverse the judgment of the court below, and on the strength of it give the land to others. It is not said that he was not an inhabitant, but that there was a failure to prove him one, and the same effect is given as if this case were a motion for a nonsuit, where an essential fact had been omitted, in the plaintiff's case.

(*c.*) But the finding of the probate and district courts, awarding the land to Young and the other appellants, is evidence that such evidence was presented, and in the absence of proof to the contrary the judgment can not be reversed on that ground.

A similar point was raised and decided in Cofield *vs.* McClelland, 16 Wallace, 331, 333–4. In that case this Court said, through Mr. JUSTICE HUNT, that "the case comes within the rule so well settled in this court, that the legal presumption is that the surveyor, register, secretary of State, have done their duty in regard to the several acts to be done by them in granting lands, and

therefore, surveys and patents are always received as *prima facie* evidence of correctness." Here, if actual *inhabitancy* were a necessary qualification, the finding of the probate court in favor of any one would be *prima facie* evidence of that fact.

(*d.*) The declaratory statement being part of the pleadings is equivalent to an assertion of all formal prerequisites, such as *inhabitancy*, &c.; and unless specifically disproved, such formal facts do not require proof any more than proof of letters testamentary to executors, &c., in a declaration in a common-law action.

(3.) *Mrs. Cain submitted to Brigham Young's occupancy of the north five rods without admitting his right to control them.*

This is contrary to Mrs. Cain's testimony (*ante*, 53). Her understanding was, and she never had any other, that Young controlled this ground; and it was utterly immaterial to the case if she did submit, as the Supreme Court have found.

(4.) *Jennings never occupied No. 51* (Ransohoff).

This is exactly the opposite of the fact (*ante*, 59-62). When suit was brought Jennings was in possession, receiving rent for the lot and building from his tenant (*ante*, 62).

(5.) *The preponderance of evidence is in favor of the view that neither Price nor his privies were ever in possession of any of the half lot.*

This is wholly incorrect. (See *ante*, 64-5 and *ante*, 45-6, note †.)

(6.) *Jennings does not appear to have been an occupaut of his "new building" on the back strips at the time suit was begun.*

This is the reverse of the fact. (See *ante*, 64-5; Jennings was actually building on these strips when stopped by the Cain claim, 230.)

(7.) *After the death of Joseph Cain, his widow and heirs occupied the whole half lot till suit was brought.*

As to the incorrectness of this, see history of the case, *passim*, and remarks on the previous six findings of the Supreme Court.

(8.) *The evidence does not show Jennings or the Stringfellows to have been inhabitants at the date of the entry of the half lot by the mayor of Salt Lake City (November 5th, 1871).*

Upon this finding, see the remarks upon the finding of the Supreme Court in regard to the non-inhabitancy of Brigham Young.

Jennings testified (230) that *he "had done business on that lot since 1854."*

George Stringfellow testified that he was in possession of the portion claimed by him when examined (November, 1872), and that he had been in possession since December 1st, 1869. He and his brother Samuel, the other claimant, possessed that strip as tenants in common (254).

III. The Territorial Supreme Court of Utah has no power to find the facts from the evidence, and enter a final judgment thereon. In this case, the only judgment the Supreme Court should have made was an affirmance of the judgment of the District Court, or an order granting a new trial.

The Territorial Supreme Court, whose judgment and proceedings in these cases have been brought to this

court by appeal for review, as a result of an examination of the evidence embodied in a statement on motion for a new trial, revised and set aside the findings of facts made by the District Court, reversed the judgment of said court, and, instead of ordering a new trial, entered a new and final judgment, awarding the entire tract of land in controversy to the Cains, who were then the appellants.

This, the Supreme Court of the territory, under the provisions of the civil practice act in force in said territory since 1870, and the acts of Congress relating to the territorial courts, had no authority to do.

This point is refered to, and may be considered under the second and third assignments of error.

The following include the provisions of the "Civil Practice Act of Utah," more directly bearing upon the question.*

---

* SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah*, That there shall be in this territory but one form of civil action for the enforcement or protection of private rights, and the redress or prevention of private wrongs.

SEC. 2. In such action, the party complaining shall be known as the plaintiff, and the adverse party as the defendant.

SEC. 180. Upon trial of an issue of fact by the court, its decision shall be given in writing, and filed with the clerk, within ten days after the trial shall have taken place. In giving the decision, the facts found and the conclusions of law shall be separately stated. Judgment upon the decision shall be entered accordingly.

SEC. 181. On a judgment upon an issue of law, if the taking of an account be necessary to enable the court to complete the judgment, a reference may be ordered. Chancery cases may be tried by the court, with or without the finding of a jury, upon issues designated by the court.

SEC. 192. A new trial is a re-examination of an issue of fact in the same court after a trial and decision by a jury, court, or referees.

Two distinct methods, differing in their nature and object, are provided by the civil practice act, by which the proceedings of a trial may be reviewed on appeal to the Territorial Supreme Court.

SEC. 193. The former verdict or other decision may be vacated and a new trial granted, on the application of the party aggrieved, for any of the following causes materially affecting the substantial rights of such party:—First—Irregularity in the proceeding of the court, jury, or adverse party, or any order of the court, or abuse of discretion, by which either party was prevented from having a fair trial. Second—Misconduct of the jury. Third—Accident, or surprise, which ordinary prudence could not have guarded against. Fourth—Newly-discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial. Fifth—Excessive damages. Sixth—Insufficiency of the evidence to justify the verdict or other decision; or that it is against law. Seventh—Error in law occurring at the trial and accepted to by the party making the application.

SEC. 194. When the application is made for a cause mentioned in the first, second, third and fourth sub-divisions of the last section, it shall be made upon affidavit; for any other cause it shall be made upon a statement prepared, as provided in the next section.

SEC. 195. The party intending to move for a new trial shall give notice of the same as follows:—When the action has been tried by a jury, within five days after the rendition of the verdict, and when the action has been tried by the court, or by a referee, within ten days after receiving written notice of the rendering of the decision of the judge, or of the filing the report of the referee. The notice shall designate generally the grounds upon which the motion will be made. Within five days after giving such notice, the said party shall prepare and file with the elerk the affidavit or statement required by the last section. A copy of the affidavit shall on the same day be served on the adverse party. The party preparing the statement shall number the pages and lines thereof, and after having filed the same with the clerk, and had such filing entered and indorsed, shall serve the same on the adverse party on the same day, who may propose amendments thereto, referring to the page and line of the statement, and shall within five days after the service on him of the statement, file his amendment with the clerk, and after having such filing entered and indorsed, shall on the same day serve the same with the statement upon the moving party, who shall, within five days thereafter, give written notice to the adverse party, if he declines admitting the amendments or they shall

The one is by appealing directly from the final judgment; the other, by applying for a new trial and appealing from the order granting or refusing it. A party to a civil action or proceeding may pursue either of these

be deemed accepted. At any time thereafter either party may have the statement settled by the judge or referee upon two days' notice thereof to the other party. If no affidavit or statement be filed within five days after the notice of new trial, the right to move for a new trial shall be deemed waived. When the notice designates as the ground upon which the motion will be made the insufficiency of the evidence, to justify the verdict or other decision, the statement shall specify the particulars in which such evidence is alleged to be insufficient. When the notice designates as the ground of the motion; error in law occurring at the trial and excepted to by the moving party, the statement shall specify the particular errors upon which the party will rely. If no such specifications be made, the statement shall be disregarded. The statement shall contain so much of the evidence or reference thereto as may be necessary to explain the particular points thus specified, and no more. When the statement is agreed to, it shall be accompanied wiih the certificate either of the parties themselves in fact, or their attorney, that the same has been agreed upon and is correct. When settled by the judge or referee, it shall be accompanied with his certificate that the same has been allowed by him and is correct. When no amendments have been filed, the statement shall be accompanied with the certificate of the clerk of that fact. On the argument, reference may also be made to the pleadings, depositions, and documentary evidence on file, testimony taken and written out by a short-hand reporter, authorized by the court to take the same, and the minutes of the court If the application be made upon affidavits filed, the adverse party may use counter affidavits on the hearing. Any counter-affidavits shall be filed with the clerk, and copies served on the moving party at least two days previous to the hearing. The affidavits and counter-affidavits, or the statement thus used, in connection with such pleadings, depositions, documentary evidence on file, testimony taken by a reporter, and minutes of the court, as are read or referred to on hearing, shall constitute, without further statement, the papers to be used on appeal from the order granting or refusing the new trial. To identify the affidavits, it shall be sufficient for the judge or clerk to indorse them at the time, as having been read or referred to on the hearing. To identify any depositions, documentary evidence on file, testimony taken by a reporter, or minutes of the court read or referred to on the hearing, it shall be sufficient that the judge designate them as having been read or referred to in his certificate to be for that purpose by him made thereon. The several periods of time limited may be enlarged

methods of bringing the case into the Territorial Supreme Court alone, or he may pursue both concurrently, provided the appeal from the judgment must be taken within a year, and the appeal from the order granting

---

by the written agreement of the parties, or upon good cause shown by the court, or the judge, before whom the cause was tried.

SEC. 196. The application for a new trial shall be made at the earliest period practicable after filing the affidavit or statement, and the court or judge granting or refusing a new trial shall state, in writing, generally the grounds upon which the same is granted or refused.

SEC. 325. A judgment or order in a civil action, except when expressly made final by this act, may be reviewed as prescribed by this title, and not otherwise.

SEC. 327. Any party aggrieved may appeal in the cases prescribed in this title. The party appealing shall be known as the appellant, and the adverse party as the respondent.

SEC. 328. An appeal may be taken :—First—From a final judgment in an action or special proceeding commenced in the court in which the judgment is rendered, within one year after the rendition of judgment. Second—From a judgment rendered on an appeal from an inferior court, within ninety days after the rendition of the judgment. Third—From an order granting or refusing a new trial, from an order granting or dissolving an injunction, from an order refusing to grant or dissolve an injunction, and from any special order made after the final judgment, within sixty days after the order is made and entered in the minutes of the court. Fourth—From an interlocutory judgment or order in cases of partition which determines the right of the several parties, and directs partition, sale, or division to be made, within sixty days after the rendition of the same.

SEC. 330. When the party who has the right to appeal wishes a statement of the case to be annexed to the record of the judgment or order, he shall, within twenty days after the entry of such judgment or order, prepare such statement, which shall state specifically the particular errors or grounds upon which he intends to rely on the appeal, and shall contain so much of the evidence as may be necessary to explain the particular errors or grounds specified, and no more, and shall file the same with the clerk, and serve a copy thereof upon the adverse party. The respondent may, within five days thereafter, prepare and file amendments to the state-

or refusing a new trial within sixty days from the date of the entry of such judgment or order [ ].

The proceedings in each of these methods are separate and distinct, and resort can not be made to any record

---

ment, and shall serve a copy thereof on the appellant; the statement and amendments shall be presented to the judge or referee who tried or heard the case, upon notice of two days to the respondent, and a true statement shall thereupon be settled by such judge or referee. If no amendments are filed, the statement may be presented to the judge or referee for settlement, without any notice to the respondent.

SEC. 334. A copy of the statement shall be annexed to the copy of the judgment-roll, if the appeal be from an order to a copy of such order.

SEC. 337. Upon an appeal from a judgment or order, the Appellate Court may reverse, affirm, or modify the judgment or order appealed from, in the respect mentioned in the notice of appeal, and as to any or all of the parties; and may set aside, or confirm, or modify, any or all of the proceedings subject to or dependant upon such judgment or order, and may, if necessary or proper, order a new trial. When the judgment or order is reversed or modified, the Appellate Court may make complete restitution of all property and rights lost by the erroneous judgment or order, and when it appears to the Appellate Court that the appeal was made for delay, it may add to the costs such damages as may be just, not exceeding ten per cent.

[COMPILED LAWS.]

(1428.) SEC. 203. Immediately after entering the judgment, the clerk shall attach together and file the following papers, which shall constitute the judgment-roll:—

First.—In case the complainant be not answered by any defendant, the summons, with the affidavit or proof of service, and the complaint, with a memorandum endorsed on the complaint that the default of the defendant in not answering was entered, and a copy of the judgment.

Second.—In all other cases the summons, pleadings, verdict of the jury, or findings of the court, the commissioner, or referee, all bills of exception taken and filed in said action, copies of orders, sustaining or overruling demurrers, a copy of the judgment, and copies of any order relating to a change of parties.

or matter peculiar to one to aid a judgment or order of the Appellate Court based upon the other. For example, a statement on motion for a new trial can not be used on an appeal from the judgment, unless it be so expressly stipulated, and even then only to the extent that it has the qualities of a statement or bill of exceptions which may be annexed to the judgment-roll on an appeal from the judgment, and no further.

The appellants in the Supreme Court of the Territory (the appellees here), after having first applied for a new trial in the District Court, and the application being there refused, appealed to the Supreme Court, both from the judgment and the order refusing a new trial. We shall consider these appeals (as they are essentially distinct) separately, for the purpose of showing that upon neither can the judgment of the Territorial Supreme Court be in any manner sustained.

1. And first as to the appeal from the judgment.

This case was tried in the District Court, without a jury; and pursuant to section one hundred and eighty of the statute, the decision of the judge was rendered in writing, the findings of fact and conclusions of law being separately stated. The Cains desire to appeal from the judgment and prepare a statement on motion for a new trial and obtain a stipulation that such statement may be used on an appeal from the judgment. The appeal from the judgment is perfected, and the transcript of the record transferred to the Territorial Supreme Court. Of what does this record on an appeal from the judgment properly consist? If there be no statement on appeal, it consists of the judgment-roll; otherwise of the judgment-roll with statement annexed.

But the statement which may be annexed to the judgment-roll is the statement provided for in section 331 of the code. It is otherwise in section 203 of the code,

called a "bill of exceptions." This statement must "state specifically the particular errors or grounds" upon which it is intended to rely on the appeal, "and shall contain so much of the evidence as may be necessary to explain the particular errors or grounds specified, and no more." This statement has the same significance as an ordinary bill of exceptions. It was intended to preserve errors in law arising upon rulings of the court, upon the admission or exclusion of evidence, and the giving and refusing of instructions to which exceptions were taken. These matters, "otherwise resting in the recollection of the judge," may be incorporated in the statement with so much evidence only as is necessary to explain them. Palpably, this statement was not intended to include *all* the evidence, and serve as the basis of an examination into the entire merits of the case, by the Appellate Court. In the case at bar, so far as the statement on the motion for a new trial includes "errors at law," it might have been looked into by the Territorial Supreme Court on this appeal by virtue of the stipulation. The only record on this appeal provided by law, consists of the pleadings (in this case the declaratiory statements), the verdict, or finding of facts and judgment, and bills of exceptions. Manifestly, it was not intended that the Territorial Supreme Court should look into the evidence, and by reference to it revise the whole case upon the merits, because no record is provided upon which such investigation can be based. It is immaterial whether the case appealed be legal, equitable, or special; they can only be reviewed according to the provisions of the code, "and not otherwise;" and by those provisions, on an appeal from the judgment, the Supreme Court can not look into the evidence.

Such is not only the true, but the well-settled construction of the code, according to the decisions.

In the case of Griswold *vs.* Sharp, 2 Cal., 17, the court use this language :—" This case was tried by the judge below without a jury. The main point on which the appellants rely for reversing the judgment is based upon the ground that the judgment of the court is not warranted by the evidence. It has been heretofore decided that where there was any conflict of evidence, the Appellate Court would not review the facts of the case. (Hoppe *vs.* Robb.) We not only affirm that decision, but will also decline to review the facts of a case unless the assignments of error show that the court below refused an application for a new trial, made on the ground that the verdict was contrary to the evidence, and that only because the statute gives an appeal from the refusal of a new trial."

Again, in the case of Brown *vs.* Graves, 2 Cal., 118, the court say :—" We have before decided that we can only revise a case upon its facts where the appeal is from the refusal of a new trial, asked for in the court below, on the distinct ground that the finding was contrary to the evidence. And this power to review the facts is derived expressly from the statute which gives an appeal from a decision granting or refusing a new trial." Language to the same effect is used in the case of Ingraham *vs.* Geldermister, *idem* 483.

" No motion for a new trial having been made, we can not examine the evidence, to ascertain whether it warrants the findings."

Covilland *vs.* Tanner, 7 Cal., 40.

Also, Garwood *vs.* Simpson, 8 Cal., 108, and Lenning *vs.* Gold, 13 Cal., 599, to the same effect.

In the case of Walker *vs.* Sedgwick, 5 Cal., 192, it was held that in an equity case the decision of the court need not be in writing; and in Gray *vs.* Eaton, *idem* 448, where an appeal was taken from an order refusing a new

trial, the court said that in equity cases to apply for a new trial was supererogatory.

The case of Duff *vs.* Fisher, 15 Cal., 375, was a suit for the specific performance of a contract where a new trial had not been applied for. In that case, the court, speaking through Chief Justice FIELD, say:—"The practice act applies to equitable as well as to legal actions, so far as its provisions are consistent with the rights and remedies administered in courts of equity." They then proceed to question the correctness of the cases last referred to, but without expressly overruling them; in regard to the former, saying, "We have a great reason to doubt the correctness of the decision. * * * The statute appears to us to apply to all cases, whether of legal or equitable cognizance, and the sooner we return to its simple rules wherever there has been any departure, the sooner will the practice become uniform and settled." In regard to the latter, "The statute was, evidently, not called to the attention of the court, and the decision can not, in consequence, be regarded as of any binding authority." (381).

But in the case of Gagliardo *vs.* Hobertin, 18 Cal., 394, which was a foreclosure suit, the court say:—"In this case, no motion for a new trial having been made, the findings of the court are conclusive as to the facts. The provisions of the code in relation to new trials apply as well to actions of equitable cognizance as to those of a strictly legal nature, and it is only through the medium of an application in pursuance of these provisions that the evidence can be brought before this court for review. In the absence of such an application, the conclusions of fact must be deemed to have been properly drawn, and the matter can not be regarded as open to investigation on appeal. * * * It is true, in Dewey *vs.* Bowman (8 Cal., 145), it was held that in equity causes no motion for a new trial is necessary; but we have on

frequent occasions expressed our disapprobation of that case, and believing it to be in direct conflict with the statute, it is our duty to overrule it. The legislature intended that the rules of practice should have a uniform operation, and that intention is so expressed as to leave no room for misapprehension. * * * And any inquiry into the nature of the action is irrelevant and inadmissible. All actions are placed upon the same footing, and the courts have no authority to create distinctions not recognized by the statute." Baker *vs.* Biddle, 13 Cal., 295. This decision (18 Cal.) was delivered at the April term, 1861, and settled the construction of the California code, of which the Utah code is a substantial copy. The same doctrine is announced in the following cases:—

Bennet *vs.* Pacheco, 27 Cal., 408.
Carpenter *vs.* Williamson, 25 Cal., 154.
Doe *vs.* Valejo, 29 Cal., 385.
Hihn *vs.* Peck, 30 Cal., 280.
Keoran *vs.* Allen, 33 Cal., 542.
Hallock *vs.* Jaudin, 34 Cal., 167.
Clark *vs.* Willett, 35 Cal., 534.
Yates *vs.* Smith, 40 Cal., 662.
Harris *vs.* S. F. S. R. Co., 41 Cal., 393.
City of Stockton *vs.* Creamer, 45 Cal., 247.

In the case of Harris *vs.* 3 F. S. R. Co., 41 Cal., 404, which was an equity case, the court say:—"It is thoroughly settled in this State that the mode of reviewing the action of the court upon an issue of fact is the same, whether the case is at law or in equity. There must be a motion for a new trial."

In Nevada, from whose code the Utah code was directly taken, the doctrine of the decisions is the same upon this point, that the Appellate Court can not look into the evidence on an appeal from the judgment.

In James *vs.* Goodenough, 7 Nev., 324, which was an equity case, the court say:—"It is urged that the evi-

dence is insufficient to justify the findings. But no motion for a new trial was made, and in no other manner can the question be raised" (328).

Again, in Conley *vs.* Chedic, *idem*, 340, the court say (and this was also an equity case):—"That the evidence does not sustain the verdict and special findings of the jury in this case, is a point which can not be considered, for the reason that no motion for a new trial was made in the court below. This has been so frequently decided by this court that it is now unnecessary to discuss it."

Montana has the same code, and Allfurt *vs.* Kelly, 2 Mon., decides, first, that an appeal from the judgment does not include an appeal from an order refusing a new trial, and the court in that case further say:—"This court can not review any question of fact if there is no appeal from an order granting or refusing a new trial." The courts of California have decided, under the same provisions of the civil practice act, that a statement on appeal "is intended solely for the purpose of bringing up alleged errors of law." The facts stated in the findings of the court must be regarded as true, and we can not consider on this appeal the insufficiency of the evidence to support the findings." In Vantilburgh *vs.* Black, *idem*, 376, the same court say:—"Proof having been submitted by both parties upon the trial of the issue, we can not disturb the findings of the court thereon. Such findings are conclusive upon us. This is an appeal from the judgment. There was no motion for a new trial, and we can not examine the evidence."

But this same question has been decided by the Supreme Court of Utah at a term preceding that at which the cases at bar were decided. In the case of Snell *vs.* Cisler, 1 Utah Rep., 298, the court say:—"The second and third grounds of appeal go to the same point, viz., the insufficiency of the evidence to support the findings and judgment. The insufficiency of the evidence was

not one of the grounds for a motion for a new trial. This court will not review the facts unless a motion for a new trial was made, based upon the insufficiency of the evidence, and then only as an appeal from the refusal to grant a new trial" (303).

In Carpenter *vs.* Williamson, 25 Cal., 158, the court say:—"We can only consider the questions arising on appeal from the judgment, for the reason that the appeal from the order denying a new trial was not taken in time." (Dooling *vs.* Moore, 20 Cal., 141.)

There is a stipulation in the record that the statement, "*on motion for a new trial, may be also used as the statement on appeal from the judgment.*" *The statement therefore may be used so far as it presents any question that can be reviewed on appeal from the judgment, but no further.* On such appeal, errors in the rulings of the court below in the progress of the trial affecting the judgment are subject to review, when the exceptions are preserved by a bill of exceptions or brought up in a statement on appeal."

In respect to the appeal from the District to the Supreme Court, from the judgment in these cases, we necessarily arrive at these conclusions:—

1. That the Appellate Court can not examine the evidence.

2. That in that court, the findings of fact of the District Court are conclusive.

3. That the statement on motion for a new trial could, by virtue of the stipulations, be used in the Appellate Court only to the extent that it presented "errors of law," and no further.

4. No valid judgment could be made by the Appellate Court, except such as would be the legal consequence of the findings of fact, made by the District Court.

Tested by these principles, the judgment of the Territorial Supreme Court must fall to the ground, for the reason that from the most casual examination of the findings of the District Court, it will at once appear that this judgment can not legally result from them.

2. The question next in order is, Had the Territorial Supreme Court authority to render such a judgment on a review of the proceedings, upon the application for a new trial on the appeal from the order of the District Court refusing such new trial?

These cases on appeal from the probate to the district, were, under the law, triable *de novo*, in the District Court. In the Probate Court "the (declaratory) statements filed shall stand in said court in the place of pleadings, and an issue be made thereon." On appeal to the District Court the Probate "Court shall cause the testimony and written proofs adduced, together with the statements of the parties and the judgment of the court, to be certified to the District Court, to be there tried anew, without pleadings, except as above provided." It is clear that "except as above provided" is equivalent to, except that the declaratory statements shall stand in the place of pleadings, and an issue be made thereon in the district court.

When transferred under these provisions, except as to the pleadings, these proceedings were virtually new cases in the District Court, and entirely subject thereafter, in their course, to the rules presented in the code.

Ricks *vs.* Reed, 19 Cal., 551.

A former verdict or other decision may be vacated, and a new trial granted to a party aggrieved, on certain grounds, specified in the code. (Section 193.) Among those grounds is "insufficiency of the evidence to justify the verdict or other decision."

When an application is based upon this ground it is required to be made upon a statement prepared as provided in section 195 of the code. (Sec. 194.)

A party intending to move for a new trial must give written notice, designating generally the grounds upon which the motion will be made. (Sec. 195.) If the statement is not filed within a specified time, the right to move for a new trial will be deemed to be waived. When the notice designates as one of the grounds of the motion, the insufficiency of the evidence to justify the verdict or other decision, the statement shall specify the particulars in which such evidence is alleged to be insufficient. If no such specifications be made, the statement shall be disregarded. "*The statement shall contain so much of the evidence or reference thereto as shall explain the particular points thus specified, and no more.*" The statement on motion for new trial was not, therefore, intended to contain *all* the evidence, but only enough to elucidate "particulars" of alleged insufficiency. To obtain an order granting a *new trial* is the sole object of this proceeding. The character of the record is not such that it may serve as the basis of the new trial when granted, but is intended solely to enlighten the mind of the court in respect to matters pertinent to the purpose and object of the proceeding—that is, an order granting or refusing a new trial. When that object is attained, the statement on motion for a new trial at once becomes *functus officii*.

A new trial is defined by the code (section 192) to be a "re-examination of an issue of fact in the same court after a trial and decision by a jury, court, or referees."

This is that which is sought for by applying under the provision of the code for a new trial, and this essentially embodies two things: "a re-examination of an issue of fact," and "the designation of the tribunal" in which such re-examination shall take place.

In other words, a new trial is an examination into the merits of this case in the same court which had before tried it. To obtain an order directing or denying this is the sole object of the proceeding under consideration. On this proceeding the district judge in his discretion can make the order granting or refusing *such* new trial, but he has no authority to do something entirely different from either. He can only grant or refuse what the party applying for a new trial seeks, basing his action on the record of this proceeding.

In these cases the District Court refused a new trial to the Cains, and they appealed from that order to the Territorial Supreme Court. By virtue of this appeal, the same record upon which the District Court could alone make an order granting or refusing a new trial, with that order added, is taken into the Appellate Court. On a review of this proceeding has the Appellate Court authority to do more than the District Court? Is the object and purpose of the proceeding enlarged or entirely transformed *ipso facto* by the appeal? The Supreme Court, like the District Court, may examine the evidence to ascertain whether it is insufficient in the particulars specified in the statement, or into any other matter appropriate in the proceeding, and it may say that a new trial shall be granted, the issues of fact re-examined "in the same court"—the District Court; but the Appellate Court can no more go outside the circle within which it alone has a discretion on this appeal to grant or refuse a new trial, as it is defined by the code, than the District Court.

The case of Sparrow *vs.* Strong, 4 Wall., 584, arose in Nevada. An application for a new trial was made in the District Court under the provisions of the code and refused. An appeal from this order was taken to the Supreme Court of Nevada, but no appeal was taken from ths judgment. The Appellate Court on this appeal in form affirmed the "judgment and decree" of the lower court. The case was then taken by writ of error to this court. Here the point was made that this judgment of the Supreme Court of Nevada was simply an affirmance of the order refusing a new trial, as on this appeal that court had no authority to render a final judgment reviewable in this court. On the other hand, it was insisted (590) that the appeal from an order refusing a new trial under the Nevada code "is intended to carry into the Appellate Court for its revision the merits of the judgment of the inferior court, and to enable the Appellate Court to act on that judgment."

The court, after reciting that the application was for a new trial, say :—"If, then, the decision is anything more than an affirmance of the order of the District Court, it is not what was expected by either party. It must not, therefore, be held to be more, unless the principles of legal construction require it;" and holding it not to be more. Again, after referring to the point that the Appellate Court could reverse the judgment on the merits on such appeal, the court say :—"We do not so understand that legislation (of Nevada) * * . There is nothing in the statutes which gives, in terms, any other or different effect to the reversing or affirming order of the Appellate Court, than would attend the allowance or denial of the motion in the inferior court. Nor is there anything in the statutes which seems intended to give by implication any such other or different effect. On the contrary, the statutes provide for the ordinary mode of reversing the judgments of inferior courts by appellate tribunals,

upon writs of error, which would hardly have been done, if it was intended to give the same effect to appeals from decisions upon motions for new trials. Decisions on such motions, by the District Courts, were required to be made upon such grounds of law and facts as the case might furnish; and upon like grounds were the decisions of the Supreme Court, upon appeal, required to be made," (597–8) holding that no final judgment could be based upon such proceeding.

In the case of Kerr *vs.* Clampitt, 95 U. S. S. C. Rep., 189, this court say:—"By the system of procedure in civil cases adopted in Utah an appeal lies to its Supreme Court from an order of its District Court granting or refusing a new trial, as well as from a final judgment. The statute enumerates the grounds upon which the verdict of a jury or the finding of a court or a referee may be set aside, and a new trial had upon the application of the party aggrieved, and provides the mode in which such grounds shall be presented to the court. * * * If the new trial be asked for excessive damages, or insufficiency of the evidence to justify the verdict or other decision, or that it is against law, or for errors occurring at the trial, the application must be made upon a statement of the case, setting forth so much of the proceedings had, evidence given or offered, and rulings of the court, as will distinctly present the grounds urged in its support. But whether the application be made upon affidavits or a statement thus prepared, the rulings therein, whether of the District Court originally, or of the Supreme Court of the Territory on appeal, are not subject to review by this tribunal. We have no jurisdiction to revise the action of an inferior court upon the question of granting or refusing a new trial, however meritorious the grounds presented for its consideration, or erroneous its decision. *The final judgment can not be examined through the rulings of the lower court upon that*

question. * * * The statute of Utah also provides the mode in which the final judgments of its District Courts may be reviewed. It requires a statement of the errors alleged upon which the appellant relies, with so much of the evidence as is necessary to explain them. Compiled Laws of Utah of 1876, sections 1413, 1550, and 1555. *This statement is only another name for a bill of exception and is subject to similar rules.* It will often embody substantially the same matters which are presented on motion for a new trial, and it is not uncommon for counsel to stipulate that the statement on the motion shall be treated as a statement or bill of exceptions on appeal from the judgment."

It requires no argument to show that if, on the appeal from the order refusing a new trial, the Supreme Court of the Territory had authority to make such a judgment as the one in the cases at bar, these decisions of this court could not have been made.

In the case of Wakeman *vs.* Coleman, 28 Cal., 58, the court say:—"Respondents move to dismiss the appeal on the following grounds: Firstly, the transcript does not contain a copy of the judgment. The appeal is not from the judgment, but from the order denying a new trial. On appeal from an order it is only required that the appellant furnish the court with a copy of the notice of the appeal * * * order appealed from, and a copy of the papers used on the hearing in the court below. These papers are contained in the transcript."

Indeed, it is a work of supererogation to argue that the judgment of the Supreme Court of the Territory—so far apart from the object of the proceeding—could under no circumstances be rendered on the appeal from an order refusing a new trial, or be based upon any matter peculiar to that proceeding, such as the insufficiency of evidence to support the findings.

But the following cases are not easily distinguishable from the cases at bar.

The case of Cuff *vs.* Dorland, 57 N. Y., 560, was in equity for the specific performance of a contract. The plaintiff was defeated in the Court of Special Term, and took an appeal from the judgment dismissing the complaint to the General Term of the Supreme Court. That court reversed the judgment of the inferior court; but, instead of remanding the case for a new trial as a result of examining the evidence, entered judgment in favor of the appellant.

The court say:—"Upon the appeal from the judgment dismissing the plaintiff's complaint, the General Term of the Supreme Court had power to reverse, affirm or modify the judgment appealed from, or order a new trial. (Code, section 330).

"That court did reverse the judgment appealed from, and then rendered a final judgment in favor of the plaintiff, who had been defeated below, for such sum as from an examination of the evidence it was thought he should have recovered at the Special Term. This the General Term had no power to do. They had power to order final judgment when the facts were agreed to by the parties, or found by the court or jury on the trial. (Purchase *vs.* Matteson, 25 N. Y., 211.) The assumption of authority in this case would not be more apparent if the General Term had in the first instance, ignoring the Special Term altogether, undertaken to try the issue, hear the evidence and render judgment as a court of original jurisdiction. In my opinion, the case presented by the record is plainly one of mistrial."

It is needless to add that the Court of Appeals in that case stood with reference to the General Term in the same position which this court occupies to the Territorial Supreme Court in the cases at bar.

In the case of Barkley *vs.* Tieleke, 2 Mon., 435, the court, after referring to their statute, which is the same as section 337 of the Utah code, say :—"In Love *vs.* Shartzer, 31 Cal., 488, it is held, that if the judgment is erroneous and the findings of the facts are such as to enable the Supreme Court to determine what kind of a judgment should have been rendered, the court below will be directed to enter the proper judgment. The courts of New York decide that the appellate courts have the power to order final judgment when the facts have been found by the court below. Edmonston *vs.* McLoud, 16 N. Y., 543; Cuff *vs.* Dorland, 57 id., 560. The cases cited by respondents established the principle that this court cannot find the facts from the evidence and enter judgment thereon. We admit that this rule is correct, but it is not applicable to this case." (437.)

In Edmonston *vs.* McLoud, *supra*, the court, speaking of the case (4 Seld., 107), say :—"In that case the plaintiff had recovered a judgment in an action for rent. There was no pretense that the allegations in his complaint were not sufficient, if proved, to sustain the action. He had given such proof as induced the court at the trial to render judgment in his favor. Upon appeal, the Superior Court reversed the judgment, and, instead of ordering a new trial, rendered a final judgment for the defendant. This was clearly wrong. It was impossible for the Appellate Court to know that, though it might deem the proof which had been given insufficient to sustain the judgment, the defect might not be supplied by another trial." (545.)

a. The judgment in this case of the Territorial Supreme Court is a final judgment, and could in no event have been rendered on the appeal from an order refusing a new trial.

b. It must be sustained, if at all, on the appeal from the judgment, without any reference to the application for a new trial.

c. As a final judgment it is subject to review in this court, and, tested by the well-established principles before referred to, it must be set aside.

3. The territorial legislation upon which this discussion is mainly based, was held valid in the case of Hornbuckle *vs.* Toombs, 18 Wall., 648.

The notice of appeal from the District to the Supreme Court of the Territory was given December 26th, 1874 (see Record 278), and the bond on appeal was given the same day (278).

The judgment of the Supreme Court of the Territory was rendered at the June term, 1876 (Record 281).

In the mean time the act of Congress of April 7th, 1874, entitled, "An act concerning the practice in the Territorial Courts, and appeals therefrom," was passed.*

---

* *An Act concerning the Practice in Territorial Courts and Appeals therefrom.* (*Approved April 7th, 1874.*)

WHEREAS, By the organic acts establishing several of the territories of the United States, it is provided that certain courts thereof shall have common law and chancery jurisdiction, and doubts have been entertained whether said jurisdictions must be exercised separately, or whether they may be exercised together in the same proceeding, and whether the codes and rules of practice adopted in said territories which have authorized a mingling of said jurisdictions in the same proceeding, or a uniform course of proceeding in all cases legal and equitable, are repugnant to the said organic acts respectively: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall not be necessary in any of the courts of the several territories of the United States to exercise separately the common law and chancery jurisdictions vested in said courts; and that the several codes and rules of practice adopted in said territories respectively, in so far as they authorize a mingling of said jurisdictions or

By this legislation the territorial statutes or codes establishing a uniform system of procedure in all cases, whether at law or in equity, were expressly recognized and confirmed.

This same act provided that the appellate jurisdiction of this court over the Territorial Courts where the case was tried by a jury, should be exercised by writ of error, and in all other cases by appeal; "*Provided*, That on appeal, instead of the evidence at large, a statement of the facts of the same in the nature of a special verdict, and also the rulings of the court upon the admission or rejection of evidence, when excepted to shall be made and certified by the court below and transmitted to the Supreme Court," &c.

---

a uniform course of proceeding in all cases whether legal or equitable, be confirmed; and that all proceedings heretofore had or taken in said courts in conformity with said respective codes and rules of practice, so far as relates to the form and mode of proceeding, be, and the same are hereby, validated and confirmed: *Provided*, That no party has been or shall be deprived of the right of trial by jury in cases cognizable at common law.

SEC. 2. That the appellate jurisdiction of the Supreme Court of the United States over the judgments and decrees of said Territorial Courts in cases of trial by jury shall be exercised by writ of error, and in all other cases by appeal according to such rules and regulations as to forms and modes of proceeding as the said Supreme Court have prescribed or may hereafter prescribe: *Provided*, That on appeal, instead of the evidence at large, a statement of the facts of the case in the nature of a special verdict, and also the rulings of the court on the admission or rejection of evidence when excepted to, shall be made and certified by the court below, and transmitted to the Supreme Court together with the transcript of the proceedings and judgment or decree; but no appellate proceedings in said Supreme Court heretofore taken upon any such judgment or decree, shall be invalidated by reason of being instituted by writ of error or by appeal: *And provided, further*, That the appellate court may make an order in any case heretofore appealed, which may be necessary to save the rights of the parties; and that this act shall not apply to cases now pending in the Supreme Court of the United States where the record has already been filed.

In view of the well-settled construction of the codes, which it was the main object of this legislation by Congress to validate, so far as there was any question of their validity, it will not be presumed that it was the intention of Congress to abrogate or change that local legislation as it had been construed by the courts. It was not the purpose of Congress manifestly to unsettle, but to give repose to the practice in the Territories.

It is quite clear, then, that the clause of the statute which we have quoted, should be so construed as to be in harmony with the procedure in the Territorial Courts as fixed by local legislation—if that can be done consistently with the language employed.

The direction of the clause of the statute in question, simply is, not that the evidence at large shall be carried into the Territorial Supreme Court on appeal from the judgment, but, in case local legislation should in the case of any territory so provide, then that their evidence shall not encumber the record in this court.

This clause does not direct that the Territorial Supreme Court shall find the facts from the evidence, and then embody those facts together with the rulings, &c., in a statement.

It simply directs that court (if the term "court below" refer to the Supreme, and not to the District Court, as both are in the category of being "below,") to make and certify a statement to this court which shall contain "the facts of the case in the nature of a special verdict," also "the rulings of the court upon the admission and rejection of evidence," &c.

As the evidence is only offered in the District Court, the "rulings" referred to must be rendered in that court, and under the code in Utah; that court alone is authorized to find "the facts of the case" from the evidence "in the matter of a special verdict," and those facts are conclusive on appeal from the judgment upon

the Territorial Supreme Court. When a statement is made and certified to this court, containing these "rulings," and these "facts," rendered and found in the District Court, the direction of the statute is complied with, and without abrogating any local legislation—instead of the evidence at large, a statement is made and certified by the court below—"of the facts of the case in the nature of a special verdict, and also the rulings of the court upon the admission or rejection of evidence," &c., which statement may be transmitted to the Supreme Court of the United States.

It will be seen that the "facts" and the "rulings" referred to respectively stand in precisely the same relation to the word "*statement*," and it is therefore no more required that the "*facts*" than that the "*rulings*" originate in the Territorial Supreme Court.

Consistently with local law, both must originate in the District Court, or "court of original exclusive jurisdiction." (Poland Bill, Compiled Laws of Utah, page 51).

But if the Territorial Supreme Court is to find the facts from the evidence, all the evidence produced below must be before it. We have already seen that in no case does the local law (the code) contemplate the sending of *all* the evidence to the Supreme Court. In the *statements* it provides it expressly inhibits the insertion of any but a limited portion of the evidence.

This *casus omissus* is not supplied by the act of Congress. In truth, this language in the act was not intended to affect in any wise the practice under the code, and should be so construed.

ADDITIONAL ARGUMENT ON BEHALF OF THE STRINGFELLOW CLAIMANTS.

In addition to the arguments already advanced (see *ante*, I., II., and III., pages 83,–112) on behalf of Brigham Young and William Jennings, the principle of estoppel applies with peculiar force to the claim by the Stringfellows. Their strip (No. 57) was sold to them under an order of the Probate Court, for its full market value, by Mrs. Cain. They occupied immediately (December 10th, 1869), and continued in occupation ever since. The Cains were then in possession of No. 53 and 55, immediately adjoining, and made no objection (*ante*, 56–7). Mrs. Crismon had already, on the preceding 14th of April, attained her majority, and was as yet unmarried (*ante* 54). Joseph M. Cain was then nineteen years and seven months old. No objection was made by any one of them, though presumably Joseph had already consulted his lawyers as to his supposed rights, and been told to say nothing about them. They were both living with their mother, either on the property, or enjoying its rent, for the benefit of which the sale complained of was made. However much Joseph and his sister and his mother may desire the property of the Messrs. Stringfellow, the circumstances of the case are of such a kind that neither law nor equity can be invoked in their favor.

SHEEKS & RAWLINS,
WILLIAMS & YOUNG,
Salt Lake City.

A. SYDNEY BIDDLE,
GEORGE W. BIDDLE,
Philadelphia;
Of Counsel with the Appellants.

JANUARY, 1879.

IN THE SUPREME COURT

OF THE UNITED STATES.

SAMUEL STRINGFELLOW, *et al.*, *Appellants,*
vs.
JOSEPH M. CAIN, *et al.* } No. 181.

—AND—

SAMUEL STRINGFELLOW, *et al.*, *Plaintiffs in error,*
vs.
JOSEPH M. CAIN, *et. al.* } No. 182.

Error and appeal from the Supreme Court of Utah Territory.

BRIEF OF APPELLEES AND DEFENDANTS.

ROBERT N. BASKIN,
Of Counsel for Appellees and Defendants.

Salt Lake Tribune Print.

POINTS AND AUTHORITIES.

I.

The portion of lot 6, Block 69, awarded to the heirs of Joseph Cain, deceased, by the Probate and District Courts, is not in dispute except a narrow strip 16x25 feet, immediately back of and adjoining No. 51.

The heirs of Willard Richards and Groesbeck were the only parties who contested the right of the Cain heirs to No. 55—see Declaratory Statements. Both the Probate and District Courts awarded No. 55 to the Cain heirs and no appeal was taken from the decree of the District Court by either the heirs of Willard Richards or by Groesbeck.

Jenning's declaratory statement covered the narrow strip back of No. 51, and he appealed.

II.

The Plaintiffs and Appellants have sued out a writ of error and also taken separate appeals.

Both of these processes cannot be pursued in the same action; nor can the Court render judgment but in one of the cases, they being one and the same.

It is therefore important to determine which of these remedies lies.

It is clear that a writ of error is not the proper process.

1st. Because this is not a common law action.

2nd. The Plaintiffs have no community of interest and cannot therefore join in suing out a writ of error.

3rd. The action is in the nature of a suit in equity.

The difference between common law and equitable remedies is marked and material.

The principles governing the process and pleadings at common law are positive and inflexible.

In an action at common law legal rights only can be enforced. There must exist a cause of action in favor of the Plaintiffs against the Defendants and in pleading the mutual altercations between the parties are carried on until a single issue is formed. Many instances, therefore, occur, in which all the matters in controversy between parties cannot be presented in a common law action, or the judgment adapted to the special exigencies which exist in particular cases.

On the other hand the principles governing equitable process and pleadings are so flexible that they may be varied to meet any new emergency and admit and generally require, that all persons having an interest in the subject matter of the controversy shall be made parties whether they have a community of interest or not, and the rules of pleading permit each party to present his case without regard to the number of issues which may be formed, or the parties between whom formed, and the final remedial process may be so varied as to meet all requirements and enforce all of the rights of the parties, and settle in one case a controversy which if it could be settled at common law, would require a multiplicity of suits.

The rights sought to be enforced in this action are not legal but equitable.

The question to be decided, is, which one of the parties is the *cestui que* trust of the title to lot 6, Block 69, held in trust by the Mayor of Salt Lake City under the Town-site Act of Congress.

There is no community of interest among the Plaintiffs in error.

Under the inflexible principles of the common law they cannot be joined, either, as Plaintiffs or Defendants in an action concerning said lot while their interests remain several.

This Court held in the case of the United States vs. Circuit Judges 3 Wal. 673, that an action to enforce a private land claim in Cal. under the act of Congress of March 3d, 1851 (9 Stat. at Large, 631), was in the nature of a suit in equity and supported an appeal from the judgment of the Circuit Court to this Court on that ground.

This action is more perfect in its analogy to equity than the above case.—As a general rule matters of trust are exclusively cognizable in Courts of equity, and their enforcement constituted one of the grounds upon which equity jurisdiction was first based.

The 1868th sec. of the Revised Statutes of the United States provides. "that the Supreme Court and "District Courts respectively of every Territory shall "possess Chancery as well as common law jurisdiction." By virtue of this section every civil action in Utah must fall under one or the other of these heads.

Section 1869 provides that:

"Writs of error, bills of exception and appeals shall be allowed in all "cases, from the final decisions of the District Courts to the Supreme "Court of all the Territories respectively under such regulations as may "be prescribed by law; but in no case removed to the Supreme Court shall "trial by jury be allowed in that court."

Section 1909 enacts that:

"Writs of error and appeal from the final decisions of the Supreme "Courts of either of the Territories of New Mexico, Utah, Colorodo, "Dakota, Arizona, Idaho, Montana and Wyoming shall be allowed to the "Supreme Court of the United States, in the same manner and under the "same regulations, as from the circuit courts of the United States, where "the value of the property or the amount in controversy to be ascertained "by the oath of either party, or of other competent witnesses, exceeds one "thousand dollars, except that a writ of error or appeal shall be allowed to "the Supreme Court of the United States from the decision of the Supreme "Courts created by this title, or of any Judge thereof, or of the District "Courts created by this title or of any Judge thereof, upon writs of *habeas* "*corpus* involving the question of personal freedom...

The Territory of Oregon was organized in August, 1848. See 9 Stat. at Large, p. 323.

Minnesota, March, 1849, ib. 406.

Utah, September, 1850, ib. 453.

At the date of the organization of the first Territory named, the New York code, which was the first one adopted in the United States, had been in operation only about one month, and the code practice which has since sprung up in a number of the States, did not prevail at all in any of the Courts of the United States, nor has it since been adopted. And at the date of the organization of the Territories of Minnesota and Utah, the New York code had not been adopted by any other State and the code system at that time was regarded as an experiment and with disfavor.

The Acts of Congress organizing the Territories

before mentioned, all contain the same provisions as those before quoted from the Revised Statutes.

See Sec. 9 of the acts organizing said Territories.

The same provisions are also contained in the Organic Act of every Territory organized since 1850.

The intention of Congress in passing these provisions must control in construing them. The object of these provisions is manifest; and this object, was, to apply to the Territories a judicial system analogous to the one which then prevailed in the Circuit and District Courts of the United States. The terms "common law" and "chancery jurisdiction" were used in the sense in which they have always been understood in the practice of the United States courts, i. e. In cases at common law, issues of law were to be tried, by the Court, and issues of fact, by a jury; and in cases in equity, both the law and the facts were to be tried by the Judge or Chancellor.

The terms, "writs of error" and "appeals" were used in the same sense that these words have in the judiciary act of 1787, as changed or amended by the Act of March 3d, 1803. They were used in their ordinary technical sense and should not be confounded or promiscuously applied. The first relates to the common law jurisdiction of the District and Supreme Courts of the Territory, and the second to all cases not falling under that head.

The first is the process by which it was intended that errors of law, in cases triable by jury at common law, should be corrected; and the second, the process by which both the law and facts should be reviewed

and retried, in cases in equity, or in the nature of equity.

"An appeal is a process of civil law origin and removes a cause en-"tirely, subjecting the facts as well as the law to a review and retrial. But "a writ of error is a process of common law origin and it removes nothing "for examination but the law."

Wiscart vs. Danchy, 3 Dall. 321.
United States vs. Wonson, 1 Gal. C. C. R. p. 5.
Bouv's Law dictionary, title, "Appeal."

That such is the true construction of these provisions is borne out by the practice under them, ever since they were passed. Also by the second section of the Act of Congress, relating to appeals from Territorial courts, approved April 7th, 1874.

Stat. at Large, vol. 18, part 3, page 27, which enacts:

"That the appellate jurisdiction of the Supreme Court of the United "States over the judgments and decrees of said Territorial courts, in cases "of trial by jury, shall be exercised by writ of error, and in all other cases "by appeal, according to such rules and regulations, as to form and modes "of proceeding, as the said Supreme Court has prescribed or may here-"after prescribe."

III.

The opposing counsel devote most of the space in their brief to the discussion of the evidence, and most of the errors assigned are based upon alleged insufficiency of the evidence to support the findings of the Supreme Court of Utah.

This Court has no jurisdiction to review the facts.

1st. Because on writs of errors, the facts are never looked into, except so far as they serve to illustrate or explain some point of exception.

In this case there is no bill of exceptions or statement presenting any objection. by Plaintiff, to the action of the lower court.

In the entry of the decree there is a statement that each of the Plaintiffs duly excepted, but the grounds of the exceptions do not appear. This Court has so often passed upon the effect of such entries that it is not necessary to do more than direct attention to the point.

There is, therefore, no exception taken, which this Court will consider, or the evidence can illustrate or explain. The fact that the case was tried by the Court does not change the rule as to the examination of the evidence.

Norris vs. Jackson, 9 Wal. 125.

2nd. Under the second section of the Act of Congress, relating to appeals from the courts of the Territories (Stat. at Large, vol. 18, part 3, page 27), the evidence at large contained in the transcript constitutes no part of the record of the case, and the clerk of the lower court was not authorized to certify or send the same up with the transcript.

It is provided in said section:

"That on appeal, instead of the evidence at large, a statement of the "facts of the case, in the nature of a special verdict, * * * * "shall be made and certified by the court below, and transmitted to the "Supreme Court together with the transcript of the proceedings and judg- "ment or decree."

That this Court cannot look into, and pass upon the evidence is too plain to be controverted.

IV.

The second assignment of the Appellants is as follows:

"The said Court erred in proceeding to a trial of the said matter, and "in not remanding the same to the District Court for a new trial, upon the "reversal of the decree thereof."

And the fourth as follows:

"The said court erred in rendering its decree in favor of the said Ap-"pellees upon the facts found, for the reason that the said findings of fact "do not support the said decree."

These alleged errors are the only ones presented by the record, which this Court can look into.

1st. Had the Supreme Court jurisdiction to make the findings of fact and render the decree?

The section of the Act of Congress before quoted (Stat. at Large, vol. 18, part 3, page 29) in explicit terms requires the Supreme Courts of the Territories in the class of actions to which this belongs to "make a statement of the facts of the case in the nature of a special verdict."

But it is alleged in the Appellants' brief that:

"There was no right of appeal, as to matters of fact from the lower court to the Supreme Court of Utah."

It is conceded by the opposing counsel, however, that under the 9th sec. of the Organic act of Utah (9 Stat. at Large p. 455), the Supreme Court of Utah might review the law, but had no power to re-examine the findings of fact of the District Court.

The error of that position is patent. It has already been shown under the 1st head of this brief, that the terms, "writs of error" and "appeals" were used in the Organic acts of the various Territories, in their ordinary and technical sense, and not promiscuously; writs of error being the process by which it

was intended that errors of law in cases triable by jury: at common law, should be corrected, and appeals the process, by which it was intended that both the law and the facts in all other cases, not embraced under the head of common law, should be reviewed and retried.

It follows that the right to writs of error in the first class of cases, and to appeals in the second class has been expressly given to litigants in Utah, by the Act of Congress organizing that Territory, and that this right cannot be taken away or impaired by the Territorial legislature. This, however, has not been attempted by that body.

The right to writs of error and appeals from the final decisions of the District Courts to the Supreme Court, granted by the 9th sec. of the Act organizing Utah Territory, is in no way limited by the language, "Under such regulations as may be prescribed by law." This language only confers upon the Territorial Legislature the power to prescribe the steps to be taken and the forms to be followed in pursuing these processes, but not to destroy or impair the right. That is to say, the Legislature may prescribe what bonds shall be entered into, how the bill of exceptions shall be taken, what notice shall be given and within what time the writ shall be sued out or an appeal taken, &c; but the distinguishing features of either the writ or appeal cannot be changed; that is, errors of law, in cases triable by jury, can only be corrected by the first, and questions of both law and fact can only be reviewed

and retried by the latter. A law of the Territorial Legislature which should make a writ of error perform the office of an appeal, in a case triable by jury at common law, or limit the functions of an appeal in a case in equity, or one not triable by jury, so that it would only perform the office of a writ of error, would be in conflict with the 9th sec. of the Organic Act, and void.

The only difference in the provisions of said sec. 9, relating to writs of error and appeals from the District Courts to the Supreme Court of Utah, and those relating to writs of error and appeals from said Supreme Court to this court, is, that in the former, these processes lie in all cases from the final decision of the District Courts, "under such regulations as may be prescribed by law." While in the latter, these processes are limited to certain specific cases, and are required to be taken "in the same manner and under the same regulations, as from the Circuit Courts of the United States."

These provisions are in effect the same, and are not susceptible of different constructions as regards the force and effect of the terms, "writs of error" and "appeals."

No one will contend for a moment that a case not triable by jury, leaving out of view the Act of 1874, relating to appeals from the courts of the Territories, can, under the provisions in question, be reversed on writ of error in this court, or that a case triable at common law by jury can be reviewed and retried on appeal.

It follows that an appeal in a case, when that process is proper, from the District Court to the Supreme Court of a Territory has the same effect that that process had in an appeal from the Supreme Court of the Territory to this court before the passage of the Act of 1874, relating to appeals from the courts of the Territories; that is, both the facts and the law are subject to review and retrial.

That this is an equitable action has already been shown.

2nd. The Legislature of Utah has not enacted any law which affects the right to writs of error and appeals granted by the 9th sec. of the Organic Act.

The Town-site act was approved Feb. 17th, 1869. Revised Stat. of Utah, p. 379, and the Practice Act on the 17th of February, 1870, ib. 401.

At the latter date the cases of Orchard vs. Hughs, 1 Wal. 73; and Noonan vs. Lee, 2 Black, 499, were in force, and the equity practice prevailing in the United States courts had been adhered to by the courts of Utah, up to that date in equitable cases, and after the passage of that code, the same practice was followed until the passage of the Act of Congress of 1874 before referred to. Since then a uniform practice has prevailed in all cases, both legal and equitable, as to forms of pleading and the manner of taking exceptions and appeals, but in all other respects the practice has remained as before.

The Practice Act of Utah was taken from the California Act, and in most respects, is a literal trans-

cript of it; the principal difference being in those provisions relating to cases in equity and to appeals.

The following provisions of the California code are omitted, to wit:

"No distinction as to the mode of taking or perfecting appeals, or as "to the effect of them, shall be made between cases at law and cases in "equity; but the provisions of the Practice act shall apply in the same "manner to all cases of appeal."

Parker's Cal. Practice Act, p. 420, Note (a) to sec. 333.

Green vs. Butler, 26 Cal. 599.

Also,

"Upon a trial of issue of fact by the Court, judgment shall be entered "in accordance with the finding of the Court and the finding, if required "by either party, shall be reduced to writing, and filed with the clerk. In "the finding filed, the facts found and the conclusions of law shall be sep-"arately stated. In such cases no judgment shall be reversed on appeal, "for want of a finding in writing at the instance of any party, who, at the "time of the submission of the cause, shall not have requested a finding in "writing, and had such request entered in the minutes of the Court; nor "in cases tried by the Court by a commissioner or referee shall the judgment "be reversed on appeal, for defects in the finding, unless exceptions be made "in the court below, for a defect in the finding; and in cases of exceptions, "for defective findings, the particular point or issue upon which the party "requires a finding to be made, or the particular defect to be remedied, "shall be specifically and particularly designated; and upon failure of the "Court to remedy, or when tried by a commissioner or referee, to cause to "be remedied by such commissioner or referee the alleged defect, the party "moving shall be entitled to his exceptions, and the same shall be settled "by the Judge, as in other cases."

Parker's Cal. Pract. Act, sec. 180, p. 266.

These provisions were omitted in the Utah Code, evidently because they conflicted with the 9th sec. of the Organic Act, and would have taken away the right of a litigant in equity, to have his case reviewed and retried on both the law and the facts, and would have utterly destroyed the appellate powers of the Supreme

Court of Utah and this Court, in such cases, then existing by virtue of the 9th sec. of the Organic Act, and abolish all distinction between writs of error and appeals, for the reason that under the above provisions of the Cal. code, the facts in an equity case cannot be reviewed except on appeal from an order granting or refusing a new trial.

Gagliardo vs. Hoberlin, 18 Cal. 395.
Deputy vs. Stapleford, 19 Cal. 302.
Regla vs. Martin, ib. 474.
Cowing vs. Rogers, 34 Cal. 648.

And it has often been decided that this court can not review the action of a lower court in granting or refusing a new trial.

Kerr vs. Clampit & Co., 5 Ott. 188.
Sparrow vs. Strong. 4 Wal. 584.

The Practice Act of Utah has no provisions like those before quoted from the Cal. Code, but has the following provisions which the latter does not contain, to wit:

"Chancery cases may be tried by the Court, with or without the find-
"ings of a jury, upon issues designated by the Court."

Revised Stat. of Utah, p. 409, sec. 181.

The 605th sec. Revised Stat. of Utah, 563, repeals so much of certain acts, enumerated therein, as conflicts with the provisions of the code, and among these acts is one relating to appeals to the Supreme Court of the Territory, the 8th sec. of which provides that:

"When the judgment final order, or decree shall be reversed either in "whole or in part, the Supreme Court may render such judgment, as the "the Court below should have rendered."

Revised Stat. of Utah, P. 351.

This provision is not in conflict with any provision of the Practice Act, and is, therefore, still in force.

The other provisions of the Utah Practice Act are the same as in that of California.

Before the amendment of sec. 180, of the Cal. Act, as in Note (a) above referred to, the California decisions were conflicting, as to whether the provisions of the code relating to new trials, applied to cases in equity.

McHenry vs. Moore & Murray, 5 Cal. 90.
Walker vs. Sedgwick, 5 Cal. 192.
Dewey vs. Bowman, 8 Cal. 145.
Still vs. Saunders, 8 Cal. 281.
Duff vs. Fisher. 15 Cal. 375.
Gagliado vs. Hoberlin, 18 Cal. 396.
Lyons vs. Lyons, 18 Cal. 448.

But when it is considered that the sections of the Cal. Code, upon which these decisions were expressly based, have been omitted by the Territorial Legislature of Utah, in adopting the Practice Act of California, and others inserted, recognizing a distinction in practice between law and equity, and that at the date of the adoption, the cases of Orchard vs. Hughs, and Noonan vs. Lee, were in force, and that the practice in the courts of the Territory was in conformity to those decisions, and that this Court, in the exercise of the appellate jurisdiction conferred by the 9th sec. of

of the Organic Act of the Territory, reviewed and retried both the law and the facts, on appeals in equity, can there be any doubt that the Legislature did not intend that the code should affect the previous practice, in equity cases, so far as new trials and appeals were concerned?

Is it not very doubtful, whether it was intended to affect the equity practice at all?

Again, the 192d sec. of the Practice Act, Rev. Stat. of Utah, p. 453, is as follows:

"A new trial is a re-examination of an issue of fact in the same court "after a trial and decision by a jury, court or referees."

This, taken in connection with sections 152, 156, 179 and 181 shows, that only issues of fact, triable by jury are subject to re-examination in the same court, on new trial.

Under sec. 181, chancery cases are triable by the Court. In cases triable by jury issues of fact are only involved, while in equitable actions, the issues are of both law and fact, and are tried together by the Court, under sec. 181, and these issues cannot be separated.

See Adams on Equity, p. 300–301, on subject of issues in equity.

It follows that as only issues of fact are reviewable on new trial, that the portion of the code relating to new trials has no application to cases in equity.

The motion for a new trial in this case was made, and an appeal taken, from the order over-ruling it, in view of the conflict of the California cases on this point, to guard against any possible mistake, not that the counsel of the Appellees regarded that as the proper practice.

The proper practice in equity cases regarding appeals, is to make a statement under the 330th section of the Practice Act, Rev. Stat. of Utah, p. 493, which is as follows:

"When the party who has the right to appeal, wishes a statement of "the case to be annexed to the record of the judgment or order, he shall, "within twenty days after the entry of such judgment or order, prepare "such statement which shall state specifically the particular errors or "grounds upon which he intends to rely on the appeal, and shall contain "so much of the evidence, as may be necessary to explain the particular "errors or grounds specified, and no more, and shall file the same with the "clerk and serve a copy thereof upon the adverse party. The Respondent "may, within five days thereafter, prepare and file amendments to the state-"ment, and shall serve a copy thereof on the Appellant; the statements "and amendments shall be presented to the judge or referee, who tried or "heard the case, upon notice of two days to the Respondent, and a true "statement shall thereupon be settled by such judge or referee. If no "amendments are filed, the statement may be presented to the judge or "referee for settlement without any notice to the Respondent."

And give the notice required by the 329th section which is as follows:

"The appeal shall be made by filing with the clerk of the court, with "whom the judgment or order appealed from is entered, a notice stating "the appeal from the same or some specific part thereof, and serving a "copy of the notice upon the adverse party or his attorney."

See also sec. 333.

If the appeal be on questions of law only, then the point of exception with so much of the evidence, as is necessary to illustrate it, should be set out in the statement, and if the appeal be on both the law and the fact, or on the facts alone, then the statement should set out the whole evidence with the points of objection; as that, the evidence was insufficient to support the findings and that the Appellant was entitled to judgment thereunder. This, then, would open up the facts

for review. On appeal, in a case at law, triable by jury, the same course should be pursued. But as questions of fact cannot be reviewed on appeal, in a case at law, in place of the evidence at large, only so much thereof as is necessary to illustrate or explain the objections, taken at the trial, should be set out in the statement.

Thus it will be seen that a uniform proceeding has been established by the Territorial Legislature, which may perform both the functions of writs of error and appeals. That is, an appeal under the provisions of the code, in a law case, is made to perform the office of the common law writ of error, and in a case in equity, the functions of an appeal, as that term is understood in the practice of the United States Courts, and used in the 9th sec. of the Organic Act of Utah.

Certainly the provisions of the Practice Act are susceptible of such a construction and such is the interpretation placed upon it in practice in Utah, by the Supreme Court of said Territory.

This construction renders the Utah code harmonious with the Organic Act and the appellate jurisdiction of this court, as it existed when the code was passed, and as it still exists, while the construction contended for by the opposing counsel would entirely destroy the harmony of the Territorial judicial system.

The Act of Congress of 1874 does not help the matter any, because that act does not change the 9th sec. of the Organic Act, except so far as it abridges

the former practice in this court in relation to the review of the facts on appeal.

It is clear, therefore, that whatever meaning was intended to be given to the 9th sec. of the Organic Act was fixed and certain at the date of its passage in 1850. Now, if this case had arisen any time between the passage of that act and the one of 1874, is there any doubt but that it would have been reviewable in the Supreme Court of Utah and in this court on both the law and the facts? If so, it is not easy to understand why a different result should now follow in the Supreme Court of the Territory, as the law of 1874 in nowise affects the practice in that court.

The numerous authorities quoted by the appellant's counsel on this question have not the remotest application. 1st, Because the Cal. Prac. Act is different from that of Utah;

2d, Because the 9th section of the Organic Act of Utah Territory is not in force in California.

Besides it is elementary, that in criminal cases, as well as civil, triable by jury, the verdict or findings of a court, when trial by jury has been waived, will not be disturbed if there be a substantial conflict of testimony, and most of said authorities relate to cases of the above class.

The cases in New York relate to the Court of Appeals and were based on the following provisions of sec. 268 of the N. Y. Code, (Voorhies' Code, p. 398), to-wit:

"(1.) For the purposes of an appeal, either party may except to a decision on a matter of law arising upon such trial, within ten days after notice in writing of the judgment, in the same manner and with the same effect as upon trial by jury. * * * *

"(2.) And either party desiring a review upon the evidence appearing on the trial, either of the questions of fact or of law, may, at any time within ten days after notice of the judgment, or within such time as may be prescribed by the rules of the court, make a case or exceptions in like manner as upon a trial by jury, except that the Judge in setting the case must briefly specify the facts found by him, and his conclusions of law.

"(3.) But the questions, whether of fact or of law, arising upon the trial, can only be reviewed in the manner prescribed by this section, the questions of law in every stage of the appeal, and the questions of fact upon the appeal to the general term of the same court, as prescribed in sec. 348."

See sec. 348, New York Code. Voorhies' Code, p. 550; also sec. 333, id. 531.

These sections expressly limit the review of questions of fact to the general term of the Supreme Court.

The Utah Code has no such provisions, and it is nowhere therein provided that facts may not be reviewed in equity cases.

V.

Do the findings support the decree.

The brief of Appellants is silent on this question, but inasmuch as the 4th assignment asserts that the findings do not support the decree, the following is respectfully submitted:

1st. A clear understanding of what is the exact nature and extent of the right acquired by an occupant of the public lands is essential in determining this point.

The Town Site Acts of Congress are a part of

the general land system of the United States and are supplementary to the general pre-emption act of September, 1841.

Stark vs. Starr, 6 Wal., 414.

7, Opin. of Attorneys General, 738.

The right acquired by occupation under the town site laws of Congress are identically the same as the right acquired by settlement inhabitancy and improvements under the Pre-emption laws, and by the location and improvement of lodes and mining claims.

In either case one who has settled upon and improved or occupied a designated portion of the unoccupied lands of the United States, or has located and improved a lode or mining claim in accordance with the local customs of miners and the laws of the United States, acquires the right to be preferred over all others in the purchase of the lands so held, upon complying with the statutory requirements.

In Frisbie vs. Whitney, 9 Wal., 195, the following from the opinion of Attorney General Bates, (10, Opin. of Attorneys Gen., 57), is quoted with approbation:

"A mere entry upon land, with continued occupancy and improvement "thereof, gives no vested interest in it. It may however give, under our "national land system a privilege of pre-emption. But this is only a "privilege conferred on the settler to purchase land in preference to others. " * * * His settlement protects him from intrusion or "purchase by others, but confers no right against the Government."

In the Yosemite Valley case, 15 Wal., 53, the Court says:

"The whole difficulty in the argument of the defendants' counsel

"arises from his confounding the distinction made in all cases, whenever "nec essary for their decision, between the acquisition by the settler of a "legal right to the land occupied by him, as against the owner, the United "States, and the acquisiton by him of a legal right against other parties, "to be preferred in its purchase."

The settler or occupant of unoccupied public lands of the United States has a possessory right which is property, and the subject of bargain and sale, even in the absence of any pre-emption or town-site law, applicable to the lands so settled or occupied, and which has always been recognized and protected by the decisions of the courts, both Federal, State and Territorial.

Lamb vs. Davenport, 18 Wal., 313;

Thredgill vs. Pintard, 12 How., 24;

Sparrow vs. Strong, 3 Wal., 103, 100 Note B.;

Meyers vs. Crofft, 13 Wal., 295, in which Thedgill vs. Pintard is quoted with approval.

The Yosemite Valley Case, 15 Wal., 93;

Little et al. vs. State of Arkansas, 9 How., 330;

Frisbie vs. Whitney, 9 Wal., 195;

Brand vs. Ashley, 18 How., 43;

Delany vs. Burnett, 9 Ill., 492, 454;

Fierbaugh et al. vs. Mausterson, 1 Idaho, R. 153;

Hubbard et al. vs. Barry, 21 Cal., 321 and cases cited;

Coryell vs. Cain, 16 Cal., 567;

Merritt vs. Judd, 14 Cal., 59;

Stainінger vs. Andrews, 4 Nev., 59;

Bouv.'s Law Dict., Title, Pre-emption;

3 Washb. Real Prop., top p. 182;

Cunningham vs. Ashley, 14 How., 377.

The right to be preferred in the purchase of public lands is acquired by the first rightful occupant or settler.

Caleb Cushing, Attorney General of the United States, speaking of the rights of occupants of a town-site under the provisions of the act of 1844, says:

"Tnat the inchoate or equitable right as against all others begins "from the beginning ot occupation. * * * If it were "otherwise, this would be an end of all the advantages expressly given, by "the statute, to priority of occupation."

7 Opin. of Attorneys Gen., 741, 733.

The maxim *"qui prior est tempore, prior est jure,"* applies to such rights.

9 Opin. of Attorneys Gen., 254;

Crandle vs. Woods, 8 Cal., 136;

Little vs. State of Arkansas, 9 How., 330;

Castnee vs. Gunther, 6 Minn., 123;

1 Lester's Land Law, 395, No. 443, p. 490, No. 464;

Colwell vs. Smith, Wash. Ty. R., 109; and cases cited under previous head.

In the case of Colwell vs. Smith the Court said:

"A person occupying public lands, whether surveyed or unsurveyed, 'under the pre-emption laws, acquires a right to the possession from the 'moment of settlement, and the courts protect such right of possession, "subject to the jurisdiction of the Register and Receiver, to settle ques-"tions of conflicting boundary or priority of settlement."

The inchoate possessory right of a settler or occupant of the public lands is a vested one as to everybody except the Government, and cannot be defeated, taken away, or affected, by any act of a third party, against the consent of such occupant or settler.

(See cases before cited.)

The possession of a pre-emption claim, mining claim, or town-site claim, in accordance with the various acts of Congress on those subjects, creates the right of preference, which can not be lost or taken away, except by the act of the party himself or the Government, and

"A person commencing an improvement (of a pre-emption claim), "has a right to continue, and anyone who interferes may be considered a "trespasser."

United States vs. Stanley, 6 McLean, 409.

Also:

"A pre-emption claimant deterred by threats * * * "from prosecuting his improvements does not lose his right."

1 Lest's Land Law, p. 389, No. 434; p. 426, No. 483; p. 426, No. 487.

The Town-site Act of Congress being a part of the general land system of the United States, the decisions quoted in regard to pre-emption claims, apply with equal force to town-site claims, so far as the reason of the rules in the one case is applicable to the other.

These possessory or inchoate rights being property the local laws of descent, homestead, conveyancing and recordation, may properly be made applicable to them, provided there be no law of Congress which such laws would contravene.

Sparrow vs. Strong, 3 Wal., 100, and Note B;

Davis & Barnes vs. Murphy, 3 Minn., 119;

Crandall vs. S. L. M. Co., 1 Col., 108.

Carhast vs. The M. M. Co., 1 Montana, 245.

The act of the Territorial Legislature of Utah, in relation to the estates of decedents, sec. 16, p. 267, Revised Statutes of Utah, provides that :

"If the personal effects are found insufficient to satisfy the debt, as "sufficient portion of real estate may be ordered to be sold for that pur- "pose."

At the passage of this act, in 1852, the only property of a real nature owned by the inhabitants were possessory rights, and the 24th section of said act provides:

"The homestead occupied by the wife, or any portion of the family of "the deceased, at the time of his death, shall in all cases be held free to "the use of the wife and family of the deceased, and shall not be liable to "any claim or claims against said estate; and if there be other property "remaining after the liabilities of the estate are liquidated, then it shall, "in the absence of other arrangements by will, descend in equal shares to "his children or their heirs; one share to such heirs through the mother of "such children, if she shall survive him, during her natural life, or during "her widowhood; or, if he has had more than one wife who either died or "survived in lawful wedlock, it shall be equally divided between the liv- "ing and the heirs of those who are dead, such heirs taken by right of "representation."

And the 1st section of the act concerning transfers of land claims and other property, passed in 1852, Revised Statutes of Utah, p. 253, provides:

"That the transfer of a land claim with the improvements thereon "must be substantially in form as follows:

"Be it known by these present, that ———— of ———, the right- "ful claimant and owner of [here describe the property and its location, "and, if required, any peculiar rights and appurtenances], do, for the sum "of ———— dollars paid by ———— of ————; or in con- "sideration of ——— good will to ——— (as the case may be), transfer "all my claim to and ownership of the aforesaid property to the said "———— heirs and assigns. Dated this —— day of ———, in the "year ———;"

And the 2d section that:

"To be valid, a transfer must be witnessed by two or more competent "persons, be acknowledged before some person authorized to take acknowl- "edgements; be recorded; and the record, page and book be certified "thereon by the Recorder in the county where the property is located."

Most it not all of the States and Territories in the West have passed like enactments, relative to the

occupation of the public lands within their jurisdiction.

Zeb's. Land Laws, 292, 775, 787, 817, 834.

See also Stat. of California.

Statutes regulating the descent and conveyances of these possessory rights have existed in all of the Territories for many years, and Congress has not disapproved any of them. "It is no unreasonabla inference, therefore, that these laws have been approved by that body."

Clinton et al. vs. Engelbrecht et al., 13 Wal., 446.

Both the Federal and local courts have uniformyl sustained the validity of these acts.

Sparrow vs. Strong, 3 Wal., 100;

Davis vs. Barnes, 3 Minn., 119;

Cahart vs. The M. M. Co., 1 Montana, 245;

Crandall vs. S. L. M. Co., 1 Colorado, 108 ;

Bouvier's Law Dict., (Title Pre-emption) and cases cited.

From the foregoing the following is deducible :

1st. That under the Town-site Acts of Congress, occupants of towns and cities, by complying with the requirements of such acts, acquire the right to be preferred in the purchase of the land occupied, according to their respective interests.

2d. That this right is a vested one, as to everybody except the Government, and cannot be destroyed or impaired by any act of a third party.

3d. That both this right of preference and the

right acquired by a settler or occupant of the public lands, in theabsence of any pre-emption or town-site acts, applicable to the land settled upon or occupied, is property, as against everyone but the Government, and is the subject of bargain and sale.

4th. That the local laws of homestead, descent, conveyancing and recordation, may be applied to them.

5th. That the first *bona fide* settler or occupant acquires these rights, and anyone who encroaches upon and interrupts his possession is a trespasser.

6th. That these rights can be lost to the first *bona fide* settler or occupant, only by some act of his own, or that of the Government; for instance, by a conveyance according to such statutory requirements, as may exist, by abandonment of possession or a failure to comply with the requirements of law, or by some act of Congress.

7th. That these rights, in the case of the death of a settler or occupant, descend to his heirs, especially if so provided by a local statute, and the heirs go into possession, in all cases where no prohibition by the laws of Congress exists.

8th. That these rights have been uniformly recognized by common consent, by legislation, both federal and local, and have always been protected and enforced by both the federal and local courts.

In the light of these facts, there can be but little, if any, doubt as to the intention of Congress in passing the Town-site Law of 1867.

It is claimed by the counsel for Appellants, that the actual occupants at the date of the entry, are the

parties who are entitled to the deed, and Cofield vs. McClelland, 16 Wal. 331–334, is cited in support of this view.

The attention of the Court will hereinafter be called to that case.

In construing the Town-site Act of 1867, the intention of Congress must control.

The first Town-site Act of Congress was passed in 1844 (5 Stat. at Large 657), and provided, that—

"Whenever any portion of the surveyed public lands has been or "shall be settled upon and occupied, as a town site, and therefore not sub- "ject to pre-emption, it shall be lawful in case such town or place shall be "incorporated for the corporate authorities thereof, and if not incorporated, "for the Judges of the county court for the county in which such town may "be situated, to enter at the proper land office at a minimum price the land "so settled and occupied, on trust, for the several uses and benefit of the "occupants thereof, according to their respective interests."

The act of 1864 (2 Bright's Dig. 394, sec. 43), which repeals the act of 1844, still preserves and recognizes the rights of settlers and occupants of cities and towns on the public lands, but provides a different mode of acquiring the title, and extends to them the additional rights of pre-emptors.

Its provisions are:

"In any case in which parties have already founded, or may hereafter "desire to found a city or town on the public lands, it shall &c., * * "Provided that any actual settler, upon any one lot as aforesaid, and upon "any additional lot in which he may have substantial improvements, shall "be entitled to prove up and purchase the same, as a pre-emption, at said "minimum price, at any time before the day fixed for public sales."

The act of March 3d, 1865, amends the above act as to the size of the town lots. 2 Bright's Dig. 395, sec. 47.

The act of March 2nd, 1867 (2 Bright's Dig., p. 395, sec. 48), provides:

"Whenever any portion of the public lands, of the United States, have "been or may be settled upon and occupied, as a town site, and therefore "not subject to entry under the agricultural pre-emption laws, it shall be "lawful, in case such town shall be incorporated, for the corporate authori- "ties thereof, and if not incorporated, for the Judge of the county court for "the county in which such town may be situated, to enter at the proper "land office, and at the minimum price, the land so settled and occupied, "in trust for the several use and benefit of the occupants thereof, according "to their respective interests; the execution of which trust, as to the dis- "posal of the lots in such town, and the proceeds of the sales thereof, to be "conducted under such rules and regulations as may be prescribed by the "legislative authority of the State or Territory in which the same may be "situated."

From these acts it is seen that there has not been a period of time since 1844, when settlers on the public lands have not been authorized and encouraged to build towns and cities on the public domain, and in addition to this as has before been shown, the possessory rights of occupants of the public lands for many years, have been recognized and protected by a common consent (which has gradually acquired the force of common law), by the local Legislatures of the Territories and the decisions of both Federal and local courts. That the ordinary rules, remedies and incidents, pertaining to the tenure of real estate, have been applied to these possessory rights, except a-against the Government of the United States, in consequence of which, individuals have, with feelings of security, expended large sums of money in building towns and cities on the Western frontier, and in a multitude of instances the bulk of individual fortune as well as the inheritance of minor children consist of such property.

There is no law requiring the authorities to enter a town or city within any given time, and it not unfre-

quently happens that these towns and cities exist and become populous and property therein very valuable, many years before any entries of them are made.

In the case of Salt Lake City, it was first incorporated in 1851, and in in 1871 had many thousands of inhabitants.

Now can it be possible that Congress intended by the passage of the Act of 1867, to make the important and valuable rights thus acquired and recognized depend upon the naked question of physical possession or occupancy, at the date of the entry, without regard to the previous rights of parties which may have existed.

If the person in possession at the time of the entry, is the party for whom the land is held in trust, and is entitled to the conveyance, such must be the inevitable result; because as Congress has the power, in disregard of the possessory rights of the first *bona fide,* rightful settler or occupant, to pass a law to confer the title on the person in actual possession at the date of the entry though he be a trespasser;

(Yosemite Valley case, 15 Wal. 53.)

(Frisbie vs. Whitney, 9 Wal. 196.)

It follows that a wrong-doer in possession, not only has a right to a deed, but that the deed conveys to him a title so absolute, that a Court of equity can not set it aside or require him to convey to the person whom he wrongfully ousted.

The cases, which have so frequently arisen in this Court, where under the pre-emption laws the ministerial

officers of the Land Department, have given the patent to one person when another had the better right, and in which the party holding the legal title has been required to convey to the party having the better right, bear no analogy to the case under consideration, because in the latter case the party in possession has the absolute and only right to the title, under the construction of this law of Congress claimed by Appellants.

Such a construction as that contended for by Appellants, would leave town property on the public lands without the protection of any law but force, and would reward the wrong-doer, who, the day before the entry, may have forcibly dispossessed his neighbor or some minor child, by investing the trespasser, with the title to the property thus forcibly seized.

A construction which produces such results ought not to be given to said act unless the language is such as to admit of no other alternative.

Fortunately the language of the acts is such, as not only to bear a construction which will protect the rights of the first bona fide occupant of public lands, but even to require such a construction, in order to give force to all the words of the act.

The act of 1844 contains this language:

"Whenever any portion of the surveyed public lands *has been*, or shall "be settled upon and occupied as a town-site, etc."

The act of 1864 the following:

"In any case in which parties *have already founded*, or may hereafter "desire to found a city or town on the public lands, it shall, etc."

And the act of 1867 the following:

"Whenever any portion of the public lands of the United States *have* "*been* or shall be settled upon and occupied as a town-site, and therefore "not subject to entry under the agricultural pre-emption laws, it shall be "lawful, in case such town shall be incorporated, for the corporate author- "ities thereof, and if not incorporated, for the Judge of the County Court "for the county in which such town may be situated, to enter at the proper "land office, and at the minimum price, the land so settled and occupied, "in trust for the several use and benefit of the occupants thereof, *according* "*to their respective interests.*"

All of these provisions are in effect the same and the expression, "respective interests," when applied to a town or city founded before the passage of said act, embraces interests of occupants acquired prior to the time of such passage.

The Pre-emption Act of 1841, extended, just as the town-site acts do, the right of pre-emption to persons who, since the first day of June, 1840, had made or thereafter might make a settlement on surveyed public lands of the United States. Under that act, can there be any doubt but that a person who made settlement on such lands, after June 1st, 1840, and before the passage of said act, such settlement being the first made, acquired the rights of a pre-emptor, and that that right could not be divested except by his own voluntary act or a law of Congress, and that such settler would be entitled to a patent though he should be dispossessed by an intruder between the date of his settlement and the date of said act?

Occupancy is as essential under the pre-emption laws as under the town-site acts, and the same acts which would constitute an abandonment in the one case would be required to constitute abandonment in the other.

Neither the Pre-emption Act of 1841, nor the town-site acts were passed to destroy rights which existed, by tacit consent, in favor of occupants of public land, as against all the world except the Government, before the passage of said acts, but to confirm the same and provide the means by which they might be finally consummated by patent.

It is true that the right of the pre-emptor or occupant of a town-site to a preference in the purchase must exist at the time of the entry. Yet, if a contest arises between third parties as to which is entitled to this preference, it can only be decided by an inquiry into facts which transpired previous to the entry, and in cases of settlement and occupation before the passage of the law; an inquiry into facts before that time may become necessary. The right of preference in any case depends upon the performance by the claimant of certain necessary acts previous to the entry; that is to say, there must have been previous occupation of a portion of land which the occupant had a lawful right to occupy, because an unlawful possession is no occupation at all within the meaning of of the town-site act.

The forcible and violent entry or detainer of any lands or other possessions of another except in the cases and in the manner allowed by law, is a misde meanor under the Criminal Code of Utah;. sec. 236, p. 616, Rev. Stat.; and other Territories also have forcible entry and detainer acts applicable to the possessory rights of occupants of the public lands.

Wyoming Rev. Stat., sec. 159.

It may be said that if the first settler is wrongfully ousted he may proceed in ejectment or under these forcible entry and detainer acts. It is true that he has such remedies, but he may proceed under either of these remedies, any time within the period of limitations.

But then the ouster may occur on the day before the entry, or if suit be brought it may not be determined at the date of the entry, or within the time when parties are required to file a declaratory statement, such as is required by the third section of the Act of Utah, relating to the executions of trusts, &c., hereinafter quoted.

Whether a suit in equity will lie to compel a trespasser who has obtained a deed from the trustee to convey to the first rightful occupant whom he has ousted, has been before adverted to.

The construction of the Act of 1867, which is being contended for by appellees, is supported by high authority.

Ricks vs. Reed, 19 Cal. 573, 574.

See also on this point, Pratt vs. Young, Hagan's Utah R. 347, to the reasoning of Chief Justice White, in which case the attention of this Court is specially directed.

It has likewise been so construed both by the Territorial Legislature and by Congress.

The 3rd Sec. of the Act of Utah, relating to the execution of the trust, &c., p. 380 of Revised Statute, provides:

"That each and every person, or association, or company of persons, "or corporation, claiming to be the rightful owner of possession, occupant

"or occupants, or to be entitled to the occupancy or possession of such lands, "or to any lot, block, share or parcel thereof, shall, within six months after "the first publication of such notice, in person, or by his, her or their agent "or attorney, sign a statement in writing, containing an accurate description "of the particular parcel or parts of land in which he, she, or they claim to "have an interest, and the specific right, interest, or estate therein, which "he, she, or they claim to be entitled to receive, and deliver the same to the "clerk of the Probate Court of the county in which such town or city is sit- "uated; and the clerk of said court shall enter such statement in a book to "be kept for that purpose, and file and preserve the same in his office, noting "the day of filing. The filing of which statement shall be considered notice "to all persons claiming any interest in the lands described therein, of the "claim of the party filing the same. And all persons failing to make and "deliver such statement within the time limited in this section, shall be for- "ever barred the right of claiming or recovering such land, or any interest "or estate therein, or in any part, parcel or share thereof, in any court of "law or equity."

Sec. 4 provides:

"That if, at the expiration of six months after the first publication of "the notice as aforesaid, it shall be found by the statement filed that there "are adverse claimants to any tract or parcel of land, it shall be the duty "of claimants, or their agents or attorneys (taking up each case in the order "of filing), to appear before the Probate Court of the county in which such "tract or parcel of land may be situated, and prosecute their claim upon a day "to be appointed by said court, not less than five nor more than thirty days "from the service of such notice; the statement filed as aforesaid shall stand "in said court in the place of pleadings and an issue be made thereon; and "on the day set for the hearing the judge shall proceed to hear the proof "adduced and the allegations of the parties, and decide according to the "justice of the case."

This construction of the Utah Legislature is as broad as the one contended for. The act of the Legislature thus construing the town-site law has not been disapproved by Congress, and "it is no unreasonable inference, therefore, that *that* law has been approved by that body."

Clinton vs. Engelbrecht, 13 Wal. 446.

Congress has not only failed to disaffirm said act, but has in express terms recognized it in its full scope.

The 3rd Sec. of the Act of Congress, in relation to the officers of Utah Territory, approved June 23rd, 1874, provides, that

"Nothing in this act shall be construed to impair the authority of the Probate Courts to discharge the duties assigned to the Probate Judges by

"an act of the Legislative Assembly of the Territory of Utah, entitled 'An "Act prescribing rules and regulations for the execution of the trust arising "under an Act of Congress entitled 'An Act for the relief of the inhabitants "of cities and towns upon the public lands.' "

Rev. Stat. of Utah, p. 53–4, and 18 vol. Stat. at Large, 3rd Part p. ——

The duties of the Probate Courts thus recognized and authorized to be carried out, are utterly inconsistent with the construction of the Act of 1867, contended for in Appellant's brief, but are in perfect harmony with the construction contended for herein. Does not this action of Congress conclude this Court from placing, on the Act of 1867, a construction which would curtail these duties of the Probate Courts of Utah?

If so, it follows that the issues between the parties in this case are not as to who were in actual possession at the date of the entry of Salt Lake City, but as to who were rightfully entitled to the possession and preference in the purchase of the lot in controversy.

To entitle a person to the benefit of the trust he must either be in actual possession at the date of the entry, or have been so previously, under such circumstances and in such a manner that his actual or previous occupation invests him with an interest under the laws of the locality where the land is situated, pertaining to possessory rights; because by the express terms of the Act of 1867, both occupancy and interest must exist. But they are not necessarily required to be concurrent at the date of the entry; and notwith-

standing occupancy in the first instance originates the interest, yet after it has once so arisen, there may be occupancy without interest, and vice versa. This is illustrated in the case when the first bona fide occupant is forcibly ousted, in which case the trespasser has the occupancy but no interest, while the party ousted has the interest but no occupancy.

If the person in actual possession was intended to be the beneficiary of the trust, the term 'interest' has no force at all in the act unless it be admitted that rights may be acquired by wrongs, which will hold good against the party injured.

The case of Cofield vs McClelland is quite different from the one under consideration.

Both the evidence in the case and the fact that the appellant failed to make the statement required by Sec. 4 of the Colorado statute, established the right of Mrs. McClelland to the premises in dispute as well as her actual occupation of the same. It is true that Mr. Justice Hunt in delivering the opinion uses this and kindred general language: "Those in possession of the land when the entry shall be made by the Probate Judge, are the persons for whom he holds the land in trust, and to whom he is to make the respective deeds," which taken separate and alone justifies the construction given that case by the opposing counsel; but the language of the whole opinion should be taken together in connection with the facts.

In Carroll vs. Lessees of Carroll, 16 How. 287, the Court says:

"And, therefore, this court and other courts organized under the com-"mon law, has never held itself bound by any part of an opinion, in any "case, which was not needful to the ascertainment of the rights or title in "question between the parties. In Cohens vs. the State of Virginia, 6 "Wheat, 399, this court was much pressed with some portion of its opinion "in the case of Marbury vs. Madison. And Mr. Chief Justice Marshall "said: 'It is a maxim not to be disregarded, that general expressions in "every opinion are to be taken in connection with the case in which those "expressions are used. If they go beyond the case, they may be respected, "but ought not to control the judgment in a subsequent suit, when the very "point is presented. The reason of the maxim is obvious. The question "actually before the court is investigated with care, and considered in its "full extent; other principles which may serve to illustrate it are consid-"ered in their relation to the case decided, but their possible bearing on all "other cases is seldom completely investigated.' The cases ex parte "Christy, 3 How. 292, and Peck vs. Jenness et al., 7 ibid. 612, are an illus-"tration of the rule, that any opinion given here or elsewhere cannot be re-"lied on as a binding authority, unless the case called for its expression. "Its weight of reason must depend on what it contains."

Mr. Justice Hunt, in the opinion in Cofield vs. McClelland, says:

"The Act 'for the relief of the citizens of Denver, in the Territory of "Colorado,' authorizes the Probate Judge of Arapahoe county to enter at "the minimum price, in trust for the several use and benefit of the rightful "occupants of said land, and the bona fide owners of the improvements "thereon, according to their respective interests," &c. (Also quotes, with approval, from the Act of Colorado as follows): "The person, or persons, "who shall have, possess, or be entitled to the possession, or occupancy "thereof, according to his or her or their respective rights or interests in "the same, as they existed in law or equity, at the time of the entry of such "lands, or to his, her, or their heirs or assigns," &c.

A *rightful bona fide* occupation is there referred to in unmistakable terms.

He also quotes further from the Colorado Act as follows:

"Each and every person or association, or company of persons, claim-"ing to be an occupant or occupants, or to have possession, or to be entitled "to the occupancy or possession of such lands, or to any lot, block, or share "therein, shall, within ninety days after the first publication of such notice "* * * sign a statement in writing, containing an accurate description

"of the particular parcel or parts of land in which he claims an interest "* * * and deliver the same into the office of the judge, or judges, and "all persons faling to sign and deliver such statement within the time "specified in this section, shall be forever barred the right of claiming or "recovering such lands, or any interest or estate * * * therein * * * "in any court of law or equity."

And in connection with this quotation says:

"That the appellant, by omitting to sign and deliver the statement re- "quired by Section 4 of the Territorial Statute, became barred of the right "to the lands, both in law and equity."

Does it not follow, that, if any one out of possession, but "entitled to the occupancy," loses all right to the land by failing to sign and deliver the required statement, that such right could be made available by signing and delivering such statement?

The law never requires a vain thing to be done.

Is it not an inevitable deduction, therefore, from said decision, that any party "entitled to the occupancy or possession" of a town lot, by complying with the above requirements, is entitled to a deed from the trustee, and that a rightful bona fide occupation, only, gives the right?

This court certainly did not intend or hold, that a party entitled "to the occupancy or possession" of a town lot, loses all right to a deed from the trustee by a failure to present his claim as required by the 4th Section of the Colorado Act before quoted, yet notwithstanding which, a presentation by such party of his claim, in accordance with said section, would be of no avail to him in procuring such deed, but that he must be turned out of the court into which he has been forced, under the penalty of a forfeiture, without redress, because he was not in full enjoyment of his right

at the date of the town entry, by reason of some one, in violation of his right, being, at that time, in actual occupation.

Such a result inevitably follows from the decision under the construction given to it by the appellant's counsel.

The point in question in the case at bar could not have been decided in Cofield vs. McClelland, except by dictum, because the facts giving rise to it did not exist in the case; for as before stated, the evidence incontrovertibly showed, that Mrs. McClelland, both at the passage of the town site act, and the entry of the land under it, was the *rightful bona fide* occupant of the lot in controversy; and she being in possession, and the only applicant for a conveyance from the Probate Court, was entitled to the deed as a matter of course. And even if her occupancy at the date of the entry had not been rightful as to Cofield, it was good against every other person, and when Cofield's right became forfeited this would have perfected the right of Mrs. McClelland to the deed.

If the evidence, on the contrary, had shown that Cofield was entitled to the occupancy or possession at the date of the entry, but that Mrs. McClelland was in actual possession, and that by reason of the collusion alleged in the bill, Cofield was prevented from signing and delivering the required statement, then the question at bar would have been involved and the language of the court in the light of such evidence would have decided the point. As it is, the only points authoratively determined are:

1st. That Mrs. McClelland, being the rightful and *bona fide* occupant at the date of the entry, was the party entitled to the deed.

2nd. And, that there being no such collusion as that alleged in the bill, proved, Cofield forfeited all rights which he may have had to the premises in controversy by his failure to sign and deliver the required statement.

The following is a condensed statement of the material findings of the Supreme Court of Utah, to-wit:

1st. Willard Richards, by the acquiescence of the original settlers of Salt Lake City, exercised the right of distributing the lots of a certain section of Salt Lake City among the settlers, and in the exercise of that right he placed Joseph Cain, deceased, in possession of the half lot in controversy.

2nd. That Joseph Cain, after moving on to said half lot, built a new dwelling house in which he lived with his family up to the time of his death, in 1857

3rd. That said half lot and the improvements thereon constituted the homestead of Joseph Cain, deceased.

4th. That he claimed the ownership of the whole half lot, and his right was recognized by the public in general and by Willard Richards in particular, and that during his lifetime he never relinquished or gave up his right to any part thereof.

5th. That he left a widow, Elizabeth Cain and two infant children of tender age, Elizabeth T. Cain, born in 1848, and Joseph M. Cain, born in 1850 (all of whom are Appellees in this case).

6th. That the widow and minor children of Joseph Cain, deceased, for a number of years after his death, continued to occupy said half lot as a homestead, when Brigham Young made claim to the North half of the East half of said lot and the widow not admitting his right, submitted to his claim and he afterwards deeded away the portion so claimed, but never was an occupant of any part thereof nor entitled to the same.

7th. That the widow and children continued to reside on the homestead until the latter became of age.

8th. The widow, Elizabeth Cain, afterwards conveyed by a deed of quit-claim to Chas. King all of her right, interest and possession to the portion of said half lot first described in the allotment to Jennings by the District Court, and that Jennings claims said portion through a chain of conveyances from Elizabeth Cain to himself, but the evidence does not show that he went into possession or ever was an occupant thereof.

(See a description by metes and bounds of the various allotments of the District Court in the findings of that court, Rec. from p. 268 to 270.)

9th. That Jennings was in possession in some way not stated, of No. 45, with extension south, but the precise time and extent of such possession does not appear, and that he claimed under Brigham Young, who was never in possession nor had any right of possession.

10th. That Price, (under a deed from whom Jennings claimed fourteen feet of the premises in dispute,) was never in possession of any portion of the same and that Jennings does not appear to have been an occupant thereof at the date of the entry.

11th. That the sixteen (16) feet of the fifty-six (56) feet (referred to in the findings, being the same described in the third allotment to Jennings by the District Court) were held by Jennings under a deed from Brigham Young, who never had any possession thereof.

12th. That Brigham Young was not at any time in the occupancy of any part of that which was allotted to him by the District Court.

13th. That the Stringfellows claim under a deed of the administrators, based on a sale made to pay the taxes assessed and for improvements placed on the ground many years after Joseph Cain's death and befor the appointment of an administrator. The estate of Joseph Cain owed no debts and the minor children were not parties to the proceedings and made no appearance by guardian, in person or otherwise; that the price paid by Stringfellows was the full market value of the property purchased, and that they went into possession on the 10th of December, 1868, under said deed and as tenants in common have remained in possession ever since.

14th. Groesbeck was never in possession and showed no right.

15th. That the widow and children of Joseph Cain, deceased, have been the bona fide occupants of

said half lot ever since his death, and have been inhabitants of Salt Lake City and have retained actual possession of said half lot ever since the death of Joseph Cain, except as herein otherwise specified.

16th. That said widow and children were the occupants of said half lot, within the statute, at the time of the entry of the land by the Mayor.

17th. That the evidence does not show that either of the applicants were inhabitants of Salt Lake City, at the date of the entry.

Under either of the constructions of the Townsite Act of 1867, contended for, these findings support the decree of the Supreme Court of Utah, except as to the Stringfellows, and under the construction contended for by the appellees, support the decree as to them also.

By virtue of the principles established by the authorities before summarized, the act of the Legislative Assembly of Utah hereinbefore quoted on the subject of descents, homestead and conveyancing, in connection with the facts found by the Supreme Court of Utah, the widow and children, upon the death of Joseph Cain, deceased, as his heirs, became entitled to the occupancy of said half lot, and having immediately afterwards gone into actual possession thereof, their right became a vested one as to everybody but the United States, and could not thereafter be divested except by due process of law or their own voluntary act, such as a conveyance or abandonment of the property, after the children became of age. It follows then, that the deed to Stringfellows is void and did

not divest the title of the heirs, for the reason that the administrators had no authority under the law, to make a sale of the property:

1st. Because there were no debts of the decedent to pay.

2d. The property being a homestead its sale by administrators was by the statute of Utah, before referred to, prohibited.

3d. The minor heirs were not parties to the proceeding.

And as regards the other claimants, they could only acquire a right through the rightful occupants, the heirs of Joseph Cain, in some of the modes authorized by law, and this not having been done, the indefinite possession of Jennings referred to in the findings was only that of a trespasser, and conferred upon him no right; and being an intruder, force is implied.

Forbes et al. vs. Herman et al., 1 Montana, 179.

If it were possible for such a possession as Jennings' to form the basis of a valid claim under the Town-site Act of 1867, it could not be extended by construction, but must be limited to his actual possession and in establishing the extent of such possession, he would be held to strict proof.

Duncan, Justice, in delivering the opinion in the case of Miller et al. vs. Shaw, 7 Serg. & R., 143, said:

"A wrongful possession cannot be extended by construction; con-
"structive possession always accompanies the right. It is a contradiction
"in terms that a man by wrong should have any right, and that this right
"by wrong should be extended by construction."

These cases arose under statutes of limitation, but the reason of the cases applies to the case at bar.

VI.

On the point, that a party must be an inhabitant of the town or city to entitle him to the benefits of the trust under the Town-site Act of 1867.—See title of Act and Selby and Spaulding's Appeal, 6 Mich., 193, Secretary Thompson's letter to the Commissioner of the Land Office, dated June 26th, 1858.

1 Lester's Land Law, 434, No. 493; also his Letters of July 9th, 1858, ib. 435, No. 494.

VII.

The doctrine of estoppel invoked by Appellants does not arise in this case:

1st. Because the facts, upon which the estoppel, as claimed, is based, have not been found by the lower court.

The acts necessary to work an estoppel must affirmatively appear.

Hill vs. Eply, 31 Pa., st. 32.

Lockman et al. vs. Wood et al., 25 Cal., 147, and other cases cited under this head.

2d. No facts being found, upon which an estoppel can arise, this court cannot go into the evidence on the question of estoppel, because as before shown the evidence constitutes no part of the record.

If the Appellants desired to avail themselves of that point in the case, they should have raised it in the lower court, and if ruled adversely to them, should

have taken exceptions in due form. As the case now stands this point was not presented to, or decided by, the lower court.

3d. The following things must all affirmatively appear, to give rise to an estoppel of the nature contended for:

1. There must have been a REPRESENTATION or a CONCEALMENT of material facts.

2. The REPRESENTATION must have been made with KNOWLEDGE of the facts.

3. The party to whom it was made must have been IGNORANT OF THE TRUTH of the matter.

4. It must have been made with the INTENTION that the other party should act upon it.

5. The other party must have been INDUCED TO ACT UPON IT.

Bigelow on Estoppel, 480.

See also, Brown vs. Wheeler, 17 Conn., 345;

Kerry vs. Farnsworth, ib. 345;

Cummings vs. Webster, 43 Me., 192;

Whiteker vs. Clive, 8 Minn., 133;

Heath vs. Derry Bank, 44 N. H., 174;

Andrews vs. Lyon, 11 Allen, 349;

Burbank vs. Ordner, 36 Pa., st. 519;

Ryerss vs. Farwell, 9 Barb., 615;

Darlinghouse vs. Whitwell, 51 Barb, 208;

Darlinghouse vs. Whitwell, 42 Barb., 18;

Jewett vs. Miller, 10 N. Y., 402.

If the Court should look into the evidence, it will be seen that these elements do not appear.

4th. The law of estoppel relating to married

women and infants, is the same. Neither are estopped unless their conduct has been intentional and fraudulent.

Kane County vs. Herrington, 50 Ill., 232; 38 Ill., 382, 146; 48 Ill., 211; 46 Ill., 18; 36 Ill., 243.

Liles vs. Leingerman, 24 Ind., 385;

Dury vs. Foster, 2 Wal., 24;

Bank of the U. S. vs. Lee et al., 13 Pet., 107;

Field vs. Squires, Circuit Court of Oregon, Jan. 1868;

Lackman et al. vs. Wood et al., 25 Cal., 147;

Brown vs. McClure, 5 Sanf., (N. Y.), 224;

Montgomery vs. Gordon, 51 Ala., 377;

Clark vs. Goddard, 39 Ala., 164.

Many of the above cases, besides numerous others not cited, hold that the doctrine of estoppel has no application, whatever, to infants.

The evidence does not show, nor even tend to show, that Mrs. Cain or either of the heirs of Joseph Cain, after they became of age, or at any other time, did anything with the intention of misleading anyone, or that anyone was ever induced, by their acts or silence, to make any improvements on the premises.

Should this Court go behind the findings of the Supreme Court of Utah Territory, it will be found that the evidence fully supports said findings and the decree.

SUMMARY OF APPELLEES' EVIDENCE.

Samuel Mulen testified that Joseph Cain took

possession of Lot 6, Block 69, in 1851, and resided thereon up to the time of his death; that he owned the 3d lot south of Joseph Cain, and resided thereon up to 1857 or 1858; that Joseph Cain was the reputed owner of said lot by his neighbors and every one else, and the premises were known as the Cain corner. *(24 and 25).

NOTE.—*The figures in brackets indicate the pages of the record.

T. D. Brown testified that he had known the lot since 1852, and that when he first knew the same it was in the possession of Joseph Cain (25), who continued to occupy the same up to his death; had a residence thereon; witness took supper with him the first night after arriving in the city or shortly afterwards; after supper he took witness out; walked towards the northeast corner, thence westward to a fence subsequently known as Price's, thence some two or three rods south of his house. "Subsequently we were speaking of the value of lots, and I asked him how much his had cost; think his answer was $320 or $380." Joseph Cain married his wife, now Mrs. Richards, at witness' house in England in 1846 or 1847 (26).

(The declarations and acts of Joseph Cain while in possession, in relation to the character and extent of his claim and possession, are part of the *res gestae* and therefore admissible.)

Cannon vs. Stockham, 36 Cal.,535.

1 Greenl. on Ev. sec. 109, N (3) and cases cited.

Ward et al. vs.Foster, 8 All., 24.

Silas Richards testified that he was assessor and collector of taxes for Salt Lake County, from March

1854, until 1858 inclusive; was intimately acquainted with Joseph Cain during the last six years of his life. He resided on what is now known as the Emporium corner, during the time witness was assessor and collector; for the first four years after being appointed, witness assessed said lot to Joseph Cain (29 and 30), who paid the taxes on the same; the fifth year it was assessed to his estate, and remitted on account of his death (30); witness was under the impression that he assessed Dr. Willard Richards personally in 1854; had no recollection of assessing said lot to Richards; was under the impression that he assessed the estate of Willard Richards annually after his death; think there was never any mention made of the lot referred to; in official operations never had any impression that the lot belonged to Dr. Richards, or any intimation of it (31). On cross-examination stated that he did not assess the estate of Willard Richards to Joseph Cain as administrator (31).

John J. Kelly testified that he knew Joseph Cain in the Isle of Man before he, witness, emigrated to Utah in 1852; arrived in September, and from that time up to the time of Cain's death was personally acquainted and did business with him; he, Cain, first resided on the Emporium lot in a little house north of the one he afterwards erected; in 1852 moved into the latter,and resided there up to the time of his death (32). On the 3d of September, 1852, met Cain who said witness was just the man he wanted to see, as he had bought a lot of Dr. Richards, had a building under

cover and wished witness to do some work on the same; went with him to the building; he showed witness the work he wanted done; went out of the house together and Cain showed witness his lot, and offered to sell part of it to witness, at the same time describing the part of the lot north of his house; understood from his own statements that the lot was his; knew of Cain's having used the portion north of his house for his own convenience at the time he was building and afterwards, up to the time of his death; after Cain's house was completed, witness supposes he was on the premises once or twice a week while Cain lived (33).

William H. Hockings testified that he became acquainted with Cain in 1854, and was acquainted with him up to the time of his death; he resided on the half lot, which witness understood belonged to him, now known as the Eagle Emporium; there was a fence on the west side of the half lot, commencing about ten (10) rods west of the Emporium corner, and and running south from that point about ten (10) rods; this fence was a mixture of poles and boards; there was a fence on the south side of the half lot (37); visited Cain's house a hundred times and it was witness' understanding from Cain and others that he, Cain, owned the half lot (38).

Joseph Taylor: Knew Joseph Cain in his lifetime (39); he lived in the 7th Ward in 1849, afterwards (witness thought within two or three years) Cain moved to the Emporium lot, and resided there

until h; is death; while Cain lived there witness was frequently on the premises, as often as once a month; there was, as near as witness could remember, a fence running north and south through it, eight (8) or ten (10) rods west of East Temple street; when Cain moved to the lot, no one occupied the lot but him (40).

John Whitney testified that he knew Cain in his lifetime; when witness first became acquainted with him, in 1852, he resided on the lot; at that time he was about moving out of a little house near the center of the lot, into a new one he had partially finished; the little house stood west of No. 47 of Exhibit 'B;' afterward put up some buildings on the lot for Cain (41); when witness first knew the lot (in 1852) there was a common pole fence on the east side, one on the north, one on the west side between Cain and Eddings; Cain occupied the space enclosed by these fences, and the witness was frequently about the premises during the lifetime of Cain (42).

William Taylor testified that he became acquainted with Cain in Nauvoo in 1847, and knew him from that time until his death; thinks Cain moved to the lot in 1851, into a small adobe house; understood him, Cain, to say that he had bought the east half of the lot; he lived in the little house until he built his new house, when he moved into the latter, and lived there with his family until his death. On the east side of the half lot was a pole fence, on the north side a shabby fence of poles, could not describe any more of

the fence; was frequently at Cain's house in his lifetime; understood from Cain while he lived there that he occupied the half lot, and his declarations to that effect were made while Cain was in possession; was talking of going into business; wanted a place on Main street and proposed to Cain to exchange a part of my lot for part of his, and Cain offered me 20 feet front on Main street, by 10 rods back, of his lot, for 40 feet front by 10 rods back of mine.

(On cross-examination.) Witness said that the 20 feet front by 10 rods back was to be the northeast corner of Cain's lot (45 and 46).

William Allen testified that he became acquainted with Cain in England in 1846; came to Utah in 1851, and found Cain living on the half lot; in 1852 went to live with him; Cain continued to reside on the half lot until his death (46); he first lived in a little adobe house a little north of the center, afterward moved into his new house, where he lived until his death; there was a pole and post fence on the east side, one on the north, one on the west side ten rods from the northeast corner, and one on the south; witness repaired the fences on the east, north and west sides frequently during the time he lived with Cain, at Cain's request; Cain occupied the land within the enclosure (47); Mr. Cain told me that he loaned Dr. Richards money, and that Richards turned over the half lot in view of the money; knew Dr. Richards; he told witness that he was glad Mr. Cain had found a man who would help him up with his house, and that Cain was improving

the lot; heard Richards call it "the Joseph Cain lot" several times; repeatedly heard Richards and Cain talk; heard Cain tell Richards his plans of improving the lot, building his house, bake-oven, and fencing, and never heard Richards claim the lot. These conversations occurred while Cain was in possession of the half lot (46 and 50).

Sophia Taylor testified that she knew Joseph Cain in Liverpool in 1840; came to Utah with him in 1847; he was married to her youngest sister; during his life (in Utah) stayed with him about half of the time; in 1851 he moved to a lot on Main street, in Salt Lake City, known as the Emporium lot; went into a little house situated some little distance from the north and east fence; lived there two winters, when he moved into his new house, where he resided until his death; Cain always seemed to occupy all of the half lot, until Mrs. Ogden came to live there, and built her house there; witness said to Cain: "Joseph, I thought you owned all of this lot;" he said President Young sent her, Mrs. Ogden, down to him to measure her off a building spot, and he said that if any other person than Brigham Young had requested it, he would not have done it; he seemed very much hurt in his feelings. Witness heard Richards tell Cain that if he would move up nearer the Postoffice (his place of business), he would give him a lot; Cain went to look at the lot the next day; in about two months afterward moved to the Emporium lot (51). The next Sunday after he so moved, Cain took wit-

ness over to the lot and asked her how she liked the new place; never heard any one but Cain claim the half lot (52).

Elizabeth Whitaker testified that she became acquainted with Cain on the plains in 1855. He resided on the Emporium lot (53); he died there in 1857; lived with him until within two months of his death; there was a fence on the west of the lot, commencing on the north line and running close to Price's house, south to Pixton's; have heard Cain say that the lot was his; he said it was too gravelly and would not grow anything, but he intended it for buildings; he used the lot for wood and lumber (54).

Thomas Bullock testified that he was County Recorder of Salt Lake County from September 22d, 1848, to September 10th, 1856. Under an arrangement among the first settlers, the distribution of the lots on Block 69, Salt Lake City, was given to Dr. Willard Richards. [See also John Taylor's testimony (43). That when a lot was given out under this arrangement he would put the party's name down on a book, containing a description of the lots, opposite the number of the lot so assigned; this book was called "The Book of Promises" (55 and 56); by Dr. Richard's order witness put the half lot down on said book to Joseph Cain; witness states that this was in the fall or winter of 1848 or 1849 (witness was mistaken in the date, as his further examination showed); thought Cain moved on the lot in 1849 or '50, was certain that he was there in 1852 in peaceable posses-

sion for he, witness, married his wife there in that year; that Cain moved to the half lot not many weeks after the same was so set down to him; (Cain moved on to the lot in 1851 in place of the time fixed by witness as above), (57).

On cross-examination, said that he did positively know that Dr. Richards told him to put down that half lot to Joseph Cain, and the Doctor was present and saw witness do it (53).

George Whitaker testified that he became acquainted with Cain in 1847 (64); Cain returned from California in 1850, and some time afterward moved into a little house on the east end of the lot where the Emporium corner now is; thinks late in 1850 or early in 1851; lived there a year or two and then moved into his new house; Cain told witness that he owned all of the lot west of the middle fence, and took witness around and showed him the half lot; Cain was in possession when this conversation occurred; that from the time Cain moved into the lot up to his death, he occupied, and exercised ownership over it; never knew any one else do so; that there was a fence on the west about 10 rods back from East Temple street; there was a fence on the north side, but it was not of much account; a pole fence on the east side (65) and one on the south (66).

Sarah Ogden testified that in 1854 she applied to Brigham Young to let her have a portion of the lot and that Cain measured her off a strip of the same, at the request of Brigham Young, on which she

built a house; that she did not know who owned the lot at the time: did not claim to own the land her house stood on (67).

John Bolwinkle testified that he lived with Cain from 1853 until within three weeks of his death; that during that time Cain lived on and owned the east half of Lot 6; he was in possession of the same and continued in possession from the time witness went to live with him until the day of his death; there was a fence on the east, north, west and south; the fences all around the lot were very poor except the west and south; witness put part of these fences up, and repaired said fences and ordered them to be repaired several times, for Cain; Cain used the part of the half lot north of his residence, generally for wood, timber, lumber, old wagons and sometimes machinery; knew that Cain bought and paid for the half lot, through conversations between Richards and Cain (which are given in detail)—(69, 70 and 71); Cain's family consisted of his wife, daughter and son; the daughter was born on the 14th day of April, 1848, and the son on the 14th day of May, 1850; Cain died on the 23d day of April, 1857 (72); Cain paid the taxes on the property while he lived on the same; had a conversation with Cain, during the time of his last sickness, in relation to the half lot; the third night before his death he said: "John, I think I am going to leave you now. I want you to see that my children are righted with the property I own. This is my homestead. I do not want my wife and children cheated in any way.

You know what property I own." He occupied ten rods square at that time, and referred to the half lot when speaking of his homestead.

Peter Van Valkenberg testified that he became acquainted with Cain in the spring of 1852; he lived on the half lot, in a small house, northwest of the one he afterwards built; lived on the half lot until his death; knew that Cain was the owner of the half lot; early in April, 1852, Cain employed witness to do some joining for him in the new house, perhaps in June, 1852; came to the building to work one morning, and was cutting joists in the lot back of the house; saw Joseph Cain, Dr Richards, Whitaker and another man, think it was Mr. Longstrath; Whitaker and the other man had a tape line; the Doctor and Cain were standing in the middle of the lot on the north line, the others were measuring from Bullock's corner; they had apparently before measured the ground from the Emporium corner to the middle of the lot (80), where they had a stake stuck, on the north line; when they had finished measuring the second time, Cain left the others standing at the corner they had established in the center of the lot, and coming near to where witness was standing, picked up a spade and went back to them and commenced digging a hole for a post; he did not succeed, and called and beckoned to witness, who went from where he was at work up to the corner where the others were standing, took the spade from Cane, dug a hole, and put a post in at their direction; Dr. Richards took his

cane and pointing to the spot on the ground, said: "Right there we want a post;" from what they both said, then and at other times understood they were dividing the lot between Cain and Richards and establishing the line; the object appeared to be to get a fence between them; they then moved to the south corner of the half lot and began to measure, and after finding the middle of the lot they drove a stake on the south line; at the time the post was set witness distinctly understood that the Doctor let Cain have the half lot (81); about three weeks afterwards witness put in three or four posts south of the stake which he had before put up, and nailed on strips of flooring; this completed the fence on the line established by Cain and Richards, the other portion having been built by some other person (81 and 82); (see Bollwinkle's testimony on same point) (71, 77, 78); from the time he put up the post witness knows that Cain and his family lived on the premises all of the time, up to Cain's death (82).

On cross-examination, in answer to this question "You say that at the time you set up that post, you knew it was distinctly understood that the Doctor thereby let Cain have one-half of that lot—who was it that understood that?" Witness said that he so understood, but did not want it to be understood that by the simple act of setting that post, it conveyed a title to Cain; that was completing a division in pursuance of a former understanding; at that time both Cain and Richards said that the point where the stake was set was the middle of the lot; it was also then dis-

tinctly stated that Cain owned *one* side, and Richards the other, and it was so stated by both the parties (83).

James McKnight testified that he was acquainted with Cain from 1851 up to his death; that he lived on the half lot; according to witness' knowledge Cain occupied 10 rods square, and owned the ground; witness at different times heard Richards refer to the premises as Cain's lot or Cain's corner, sometimes using one and sometimes the other of these expressions; witness was an employee of Richards in the Deseret News office (84).

Brigham Young testified that he was quite sure Cain built on lot 6, and was living there in 1851; thought Cain's family after his death occupied the house that he built (87); that witness considered himself the owner of the land on which he had filed, *the title of which he wished to get, so as to give Jennings a legal title*, as Jennings owned the improvements (88); that witness did not own No. 47, but that it belonged to the Co-operative institution; was trying to own No. 49; the Co-operative store was in possession and paying witness rent; his possession was as trustee in trust (89); had no recollection of any one having deeded to him any of the property as trustee in trust; never lived on any portion of the lot; that until the deed to him by the heirs of Richards (which was executed Jan. 20th, 1872—see Rec. p. 258) witness never had any personal claim on the Emporium lot. In answer to this question: "The only foundation you rest your personal claim on, then, is the conveyance of the heirs of Willard Richards to you?" witness said: "In the first

place I claim a full and complete title from discovery, and also by having peaceable possession for many years. I suppose the property was turned out to liquidate a debt from Willard Richards to the trustee in trust. I have a right to make my declaratory statement by virtue of a deed from the heirs of Willard Richards."

In answer to the following question: "You have before stated that you have deeded to Barratt and Roberts, Brigham H. Young and Jennings, a portion of the property (90); since those deeds you have not been in possession, and are not now, are you?" witness said: "*I refuse or decline to answer; I am perfectly willing to answer any question that will throw any light upon the subject, but to have questions criss-cross, I don t think it proper, and I am not willing to answer such* (91)."

(The evidence was being taken in the Probate Court, and as counsel for appellees deemed an application to commit the witness for contempt in that court would be fruitless, the examination was here brought to a summary end; the deeds referred to were executed in 1865 and 1869, Rec. 258–258).

Howard Livingston testified that Cain was residing on the half lot from 1851 to 1857; the property was called the Cain Corner; when Cain was building his new house he told witness he owned it; witness thought the new house cost about $3,000 (91).

G. T. Mumford testified that he knew Cain in Illinois, and afterwards in Salt Lake City, up to his death; he resided on the Emporium lot; Cain built a house on

the same while he was living; the premises were frequently called Cain's Corner (93).

Thomas Marshall testified that his law firm, Marshall & Carter, were employed about the 1st of February, or March, 1871, on the part of the Cain heirs in the matter, involving the title to Lot 6, Block 69, Plat A, Salt Lake City, but legal steps were then delayed owing to the minority of Joseph Cain; were employed to prosecute the claims of the heirs of Joseph Cain for 10 by 10 rods on the corner of the Emporium lot (94); that during such employment witness talked with Jennings several times about the claim of the Cain heirs to the ten rods square; nearly a year before his examination he talked with Jennings on the subject, and in the fall of 1871 had another conversation with him in the presence of Cain and Crismon (95).

W. P. Appleby testified that he knew Cain from 1853 up to his death; that he (Cain) resided on the Emporium lot with his family, from 1853 up to the time of his death; there was a fence on the west side of the lot; one on the north, and part of the time on the east; the west fence was about 10 rods from the east line; witness thought Mrs. Cain continued to occupy the premises after Cain's death (96-97).

Vincent Shurtliff testified that he visited Mr. Cain in 1853; he lived on the Emporium lot; told witness tha the (Cain) owned the half lot (100).

Joseph Harke testified that Cain moved on to the Emporium lot in 1851, and resided there until his death; that the lot was called the Cain lot (101).

Franklin and Samuel Richards identified the books containing Exhibit "C," Rec. 262 (104–106).

Joseph M. Cain testified that he was the son of Joseph Cain, deceased, and one of the parties to the contest (113). Joseph Cain, deceased, had but two children, Mrs. Crismon and witness; the former was born April 14th, 1848, the latter May 14th, 1850. Witness' father lived upon and owned the half lot in dispute; was present at the death of his father, which took place April 20th, 1857. A few days before his father's death, he called witness and Bolwinkle up to his bed and asked the latter to watch over witness and see, that when he grew up he would keep the homestead; that he (Joseph Cain, deceased,) had it fixed so that it would never be sold; that he only had a half lot for his children; that Mrs. Ogden had just begun to build there, but would soon move away; that that was not her ground, and that she only wanted to live there a little while. At the time of his father's death there was a fence on the east side of Eddings' house, running north and south through the lot (114); is positive there was no fence running through the lot from east to west between the homestead and Shearer's whip-shop (115). Witness had a conversation with Jennings about a year before (the date of the examination was October 10th, 1872); witness asked him what he would give for our (the heirs') title to the Ransohoff building and all north of that; witness marked out upon his plat, 10 rods back and up to the Emporium corner, including the same, and asked what he would give for a clear title to the premises so

marked out; witness met Jennings next day, and made arrangements to meet at Marshall & Carter's office; met there that night; Marshall and Jennings did most of the talking; Marshall made the proposition to Jennings to have the heirs perfect his title to the Ransohoff building and what he (Jennings) was building on, for $16,000; Jennings said he would not give it, *that he thought he would try the Richards title*, that that was better than Cain's. Marshall said to Jennings: "You had better take us up; if we start, we will beat you." Jennings replied: "Go ahead, crack your whip." During the conversation Marshall asked witness how much he claimed, to which witness replied, 10 rods square (115). (See the testimony of Charles Crismon to the same effect. 107-108).

Witness stated that a little over a year previous he asked Joseph Horne if he knew anything in regard to witness's father's ownership of the half lot, and he replied that he did not know anything but supposed that it belonged to his father; Horne had forgotten that he was one of the appraisers of the estate of Williard Richards; witness showed him a copy of the appraisal in which, Horne and Rhodes as appraisers of said estate, had appraised a portion of Lot 6, Block 69; Horne read the same and replied that it had been so long ago that it had entirely gone out of his mind and he did not remember anything about it; Kept a journal in early days, would look it over and might find something to refresh his memory. This conversation was before the conveyance by the heirs of Richards to Young. About two months afterwards

witness and Crismon went to see Horne; did not find him at home but met him on the corner of the street. Witness asked him if he had looked at his journal and found anything to refresh his memory in relation to his father's ownership of the half lot. Horne replied that he had looked at it but found nothing; Crismon then asked him if he could not remember the part of the lot. which he appraised; he replied that he could not, that it might have been for all he knew the west half or the Riley piece; Witness further stated that the half lot was his father's homestead (116.) (See testimony of Charles Crismon to same effect, in regard to this conversation with Horn, 107).

On cross-examination witness stated that he remembered the west fence was built of poles, slabs and brush, that his folks had a big black dog *which jumped out of the second story of the Deseret News building and broke his leg and witness' father sent for John Eddings who stood by that fence and shot him* (119); that there were three different fences built on the west of the half lot, the last being about 13 feet east of the old first fence and built by Wells, Fargo & Co., in 1865 or 1866.

On re-examination said that he employed Marshall & Carter in relation to the half lot about three or four months before he became of age; that in measuring for the purpose of making the plat (Exhibit B), witness measured the distance from the east line of the half lot to the original fence spoken of in the cross-examination, and it was 165 feet, or ten rods (128); being recalled said that his mother, Mrs. Crismon, and himself,

lived in Salt Lake City, and had so lived for the last 22 years (144).

Elizabeth Richards testified that she was the wife of Joseph Cain at his death, and had two children living at that date, Elizabeth T. and Joseph M. Cain; the first born April 14th, 1848, and the second May 14th, 1850 (128). Her husband resided on the east half of the Emporium lot at the date of his death; it was his homestead; he and his family moved to the half lot in 1851; went into a small adobe house a few rods from the northeast line.

Mr. Cain let George Given, a baker by trade, have a portion of the lot to erect a bake house on; Given during the spring and summer hauled building material on to the place; Cain hired the team; after the foundation had been dug, Given died (129); Cain went on and completed the bake house; afterwards, as a matter of economy, Cain erected his new dwelling against the bake house, as by so doing the expense of one wall would be saved; that when they first moved on to the lot it was not Cain's intention to build his dwelling house on that portion of the lot, but after Given's death the programme was changed (130–133); that, at the time they moved there, there was a pole fence on the north and east, made by the Ward; in the fall of 1852, Dr. Richards and Mr. Cain established a line, and stakes were driven down; shortly afterwards a fence was put up, by Mr. Cain, on that line; it ran north and south, commencing on the north line, and ran through the lot; this fence, as witness under-

stood, was intended to be placed in the center of the lot, and was placed there satisfactory to Cain and Richards, and remained there until 1858 or 1859, at which time it was burned up by a tenant of witness' (130–135). Mr. Cain occupied the half lot from the time he moved there in 1851 until his death; he occupied to the east, west, north and south fences, and owned the land enclosed by these fences; the half lot was given to Mr. Cain by Dr. Richards, and Cain moved on to the same at his request (131–135). Never heard Dr. Richards, though he was frequently around while they were building, make any claim to the half lot; Mr. Cain, seeming to be very much put out on one or more occasions, remarked to witness something like this: that President Young had sent word to him to measure off a certain portion of the half lot to Mrs. Ogden. and indicated that he considered it an encroachment upon his rights; that her husband claimed the half lot which he occupied. In the spring following her husbands death, witness understood that the army was coming, moved and left everything; the understanding was that the President controlled that lot north of Mrs. Ogden's; made no inquiry into the matter; got the idea that the five rods south of Mrs. Ogden's was witness's, and that north was President Young's. We were all subject to the will of our leaders—those of us who wished to live our religion; would have taken the word of our leaders, in those days, as readily as an angel's; President Young claimed that portion north of Mrs. Ogden's, and witness never ques-

tioned it. *No person in those days questioned the leaders' transactions* (132). That witness was positive that at the date of her husband's death there was no fence running east and west through the lot (132 and 133); that Mrs. Braddock and Franklin moved into the little adobe house by Mr. Cain's permission, obtained by Dr. Richards (134).

To meet and overturn the case thus made by the appellees, Morgan L. and Henry L. Hinman were placed on the witness stand, but by which of the appellants the record does not disclose, and they testified, in substance, that previous to the time Joseph Cain, deceased, moved to the half lot, in 1851, their father had occupied and improved the same as tenant of Dr. Richards. This testimony is not important, and has but little, if any, bearing on the case, as it relates to a period anterior to the acquisition of Cain's right (144 to 151).

Robert Paxton was also placed on the stand, but by which of the appellants does not appear. His testimony, being of no consequence, is passed over without comment.

Certain portions of the evidence adduced by the Richards claimants and Brigham Young, conflicts with that of the appellees.

The evidence of the appellants having been fully summarized in the brief of their counsel, only such portions thereof as are necessary to fix the attention of the Court to the points of conflict in the evidence, will hereinafter be adverted to, and such remarks made as are deemed essential to explain the same.

John Eddings testified that Cain moved on to the Emporium Lot in 1850 or 1851; Cain occupied the portion of the half lot his house stood on, back to within a rod of the strip which Richards gave witness (160); that there was no fence running north and south near witness' east line, (this latter statement is contradicted by most of the other witnesses; those by whom it is not contradicted, except Eddings' wife, had no remembrance whether there was a fence there or not. The location of the original fence built on the line established by Richards and Cain between them, in the middle of Lot 6, was an important point in the case, and as Edding lived within a few feet of the same, from 1853 to 1855, his positive statement that there was no fence on the west of the half lot, shows, that he at least possessed a treacherous memory). Subsequently Eddings stated that he never talked with Joseph Cain about the lot; heard the Doctor's people say that Cain only owned forty feet (168) two or six months before; except from statements of Dr. Richards said he did not know whether Richards owned any of the half lot after Cain moved there; that Richards' wives may have gone into the little house by Cain's consent, but witness did not believe so.

(It is evident from this witness' statements that he was not impartial).

George A. Smith testified, on behalf of Richards' heirs, that he heard a conversation between Brigham Young and Cain in relation to an account which the estate of Dr. Richards owed the Church, and that

Young said to Cain: "You let us have the corner of the Doctor's lot above your house, and we will not trouble about the amount"; and that Cain replied he would do so; that this conversation occurred about two months after Richards' death (176).

(This conversation was a mere casual one on the street, all of which the witness did not hear, and the remark, "the corner of the Doctor's lot above your house," applied to the "southeast corner next above the lot occupied by Joseph Cain, and immediately across the street from the Emporium corner," owned by Richards (see Nannie Richards' testimony (177), also (92), and could not have applied to the Cain corner.

Heber John Richards, on behalf of the Richards claimants, he being one of them, testified, that he knew that Cain considered the north half of the east half ours (the heirs of Willard Richards) for the following reasons: The little house that Mrs. Braddock lived in, he persuaded her to leave; heard Cain talking to the family about the benefit they would derive from leasing the corner; that witness got shoes on the rent; thought Livingston and Kinkead had made Cain an offer to lease the ground for a term of years (203). (This conversation evidently referred to the Richards corner above the Cain corner. See Livingston's testimony (92).

On cross-examination, said that his understanding was that Cain was a tenant at will of the ground his house was on (205); that for anything witness knew to

the contrary Cain might have purchased a portion of Lot 6 from his, witness' father (206); did not know that his father did not dispose of the half lot to Cain (213). In 1854, shortly after Richards' death, heard Cain tell Mrs. Braddock that if she would move out he could rent the little house in which she lived to Shearer, and the rent would provide boots and shoes for the family (of Richards) (214–215).

Nannie Richards, one of the Richards claimants, testified to the same conversation as Heber John Richards, and thought that Cain was talking of leasing to Livingston and Kinkead (see Livingston's testimony (92); that she was furnished shoes from the shop of Shearer by Cain.

(The ground which Cain was thus talking of leasing to Livingston and Kinkead was evidently the Richards corner. This is rendered more certain from the testimony of Dan'l Shearer, who on behalf of the Cain heirs testified that when he rented the little house of Cain, he being a whip maker by trade, had no idea of carrying on the business of shoemaking, and that the presence of shoemakers in his shop arose in this way: there were two shoemakers across the street, and some time after Shearer had moved into the little house, two shoemakers, Snelgrove and Johnson, applied for room for their shoemaker's benches, as the house which they had been occupying was being torn down (112–113); (and therefore Cain, at the time he let the house, could not have contemplated that shoemaking would be carried on in the building)

Both Shearer and Snelgrove testified that the family of Richards had shoes from their shop, which were applied in payment of the rent to Joseph Cain. Shearer paid $10 per month rent from 1854 until after Cain's death (172–175).

(There is no doubt but what such was the case, yet at the same time it is equally certain that the rent was collected by Cain for his own benefit, and Exhibit C (262) explains the whole transaction. This exhibit is the account of Joseph Cain with the estate of Willard Richards and his family, during the period that Shearer occupied the little shop; and while this account contains daily transactions of Cain with said estate and family, there is not a single item of rent in it, and the shoes furnished to the family are charged to the individuals who received them).

William Huskinson, on behalf of the Richards claimants, testified that Cain made the following statement to him: "There is a chance for you to buy this land (referring to the north half of the lot), as the family want to sell it (225–226).

(This witness' statements are not worthy of credit, as will appear by reference to his testimony. The same of Emma Bull's testimony, 184).

Joseph Bull, on behalf of Brigham Young, testified to a conversation which he stated he had with Joseph Cain in 1853, in which conversation Cain, in substance, stated to witness that he only owned the ground on which his house stood (232). (It is a matter worthy of note, that this witness repeated these con-

versations twice in his examination (234-235), and the order and phraseology observed and used by him in doing so, strongly indicated that he was repeating something, the order and language of which had been previously arranged in the mind of witness for the occasion).

Joseph Horne, on behalf of Brigham Young, testified, that as one of the appraisers of the estate of Willard Richards, deceased, he at the request of Joseph Cain, appraised a portion of the north part of that lot, but the exact portion he could not tell; there was a small adobe house on it at the time; from the best of his recollection it was occupied by a portion of Richards' family (238); the portion appraised extended to and included the Emporium corner; Joseph Cain was at the time administrator (239).

(This evidence of Horne's is contradicted by the testimony of Joseph Cain (116) and Charles Crismon (107); besides Horne in his further examination made statements inconsistent with the idea that he appraised any portion of the half lot).

Witness said that there was a fence running east and west between Cain and Richards, which was south of the ground appraised (242-243).

(There was no such a fence on the lot, as the testimony of the other witnesses conclusively shows; and the only fence corresponding to the one described by witness was the one between Eddings and Cain. It is clear that either the Eddings or Longstroth property was the one appraised, because Joseph Cain on May 17th, 1854, wrote as follows to the Probate Judge, to-wit:

"*To the Probate Judge of Great Salt Lake County:*

"SIR: I beg leave to call your attention to a mistake in the appraise-'ment of the property of the estate of the late Willard Richards, which I, "ask your Honor to correct, to-wit:

"Lot 1, Block 76, valued at	$800.00
"A portion of Lot 6, Block 69, valued at	150.00
"One ten acre lot in the big field	20.00
	$970.00

"On referring to the Recorder's office, I discover that the said lots do "not belong to the estate, and the ten acre lot was disposed of prior to the "death of Dr. Willard Richards.

May 17, 1854.

Respectfully, yours, etc.,
JOSEPH CAIN,
Administrator of the estate of Willard Richards, deceased."

[Exhibit G, 262.]

The deed of Richards to Longstroth (186) is not competent evidence, and even if it were so, its weight amounts to nothing, because Richards' ownership of Lot 6 is stated by way of recital, and the conveyance was for a part of the lot which it is conceded he owned. Such a recital is the merest hearsay, and not entitled to any weight.

GENERAL REMARKS.

The only witness William Jennings placed on the stand, was Wm. Price, and he was examined, only, as to the execution of the deed by him to Jennings, referred to in Exhibit A (257), and the location of the fence on the west side of said half lot (255, 256).

Jennings did not rely on possession, but rested his case solely on the testimony of Price, and the conveyances contained in Exhibit A.

The indefinite possession of Jennings mentioned in the findings, was only incidentally referred to by the witnesses of the other parties, his possesison not being a point sought to be proved or disproved, because not relied on by him.

Jennings was placed on the stand by Young, but not a single question was put to him in regard to his possession. He certainly, of all others, knew best whether he was in possession at the date of the entry of Salt Lake City, of any portion of said half lot, and if so, the extent and nature thereof. Not having relied on such possession the point was not in issue between the parties, and therefore neither the appellants or appellees examined any one in reference thereto and it is now too late for Jennings to rely upon the same.

The Supreme Court should not have made any finding on the question of Jennings' possession at all, because it was not a point put in issue by him, or to which the evidence was directed. As it is, the findings in that regard are based upon mere incidental remarks of witnesses who were not being examined on the question of Jennings' possession at the date of the entry, or any other date, but on issues mooted between the other parties to the suit, in which Jennings took no part.

These incidental references did not even tend to show that Jennings was in possession at the date of the entry, or at the passage of the Townsite law of 1867; nor did they establish, or tend to establish, Jennings' possession of any particular portion of said half lot at any time, or define the nature or extent thereof.

As to the possession of Brigham Young, his own testimony shows that he never had any possession of any part of the half lot, and never made any personal claim until the deed of the Richards heirs to him, Jan. 20th, 1872. It is a fact worthy of notice, that on the 20th of Jan., 1872, Young bought the title of Richards' heirs to a portion of said half lot, as also did Jennings on the same date, the former paying $14,000, and the latter $500, and that in the trial they rested their case wholly on that title. Jennings, in his conversation with Joseph M. Cain, told him that he would try the Richards title, as he thought that was a better title than Cain's (115). These facts are significant, because they show that both Brigham Young and Jennings knew that they had no valid title to the property as against the Cain heirs, and they bought in the Richards title to defeat that of Cain. Jennings stated to Roberts that he would see Young and get him to perfect the title (29). Also stated to Crismon that he, Jennings, had bought a portion of the property in dispute from Young, and that he would make his title good—that he, Jennings, would hold Young responsible (108). And Young in his examination said: "I consider myself the *bona fide owner* of the land (Jennings of the improvements), and for which I wish to get my title so as to give Jennings a legal title" (88). They both seemed to be aware that they had no title, and evidently combined in buying the Richards title to defeat the Cain heirs. They are represented by the same attorneys, although their filings conflict. There is, and was, from the beginning, an understanding between Young and Jennings.

In conclusion, the counsel of appellants are mistaken in supposing that a case on appeal from the Probate Court to the District Court, under the 6th Sect. of the Territorial Act, relating to the execution of the trust, etc., Revised Stat. of Utah, 381, is triable on the evidence adduced in the Probate Court. On such appeal the case is triable *de novo*, and such is not unfrequently the practice; yet, if the parties agree, as sometimes happens, the case may be tried on the evidence certified up by the Probate Court.

Respectfully submitted,

ROBERT N. BASKIN,

Of Counsel for Appellees and Defendants.